

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
BEFORE THE HONORABLE LARRY R. HICKS, DISTRICT JUDGE

ORACLE USA, INC., a Colorado :
corporation; ORACLE AMERICA, :
INC., a Delaware corporation; :
and ORACLE INTERNATIONAL : No. 2:10-cv-0106-LRH-PAL
CORPORATION, a California :
corporation, :
:
Plaintiffs, :
:
vs. :
:
RIMINI STREET, INC., a Nevada :
corporation; and SETH RAVIN, :
an individual, :
:
Defendants. :
:

TRANSCRIPT OF JURY TRIAL - DAY 11
(Pages 2074 through 2279)

September 28, 2015

Las Vegas, Nevada

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1 LAS VEGAS, NEVADA, SEPTEMBER 28, 2015, 12:40 P.M.

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3 P R O C E E D I N G S

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5 (Outside the presence of the jury.)

6 COURTROOM ADMINISTRATOR: Please rise.

7 THE COURT: Have a seat, please.

8 Good afternoon to everyone after the long
9 weekend, and I see that some people at least were busy on
10 this case over the weekend.

11 The record will show that we're in open court.
12 The jury's not present.

13 I have in front of me the issue raised by Oracle
14 in its pleading number 825 which was filed yesterday --
15 excuse me. I may have those numbers mixed up. No, that
16 appears to be wrong.

17 And a response filed on behalf of Rimini today,
18 and some additional authority that's also been filed on
19 behalf of Oracle.

20 So I assume that's why counsel have requested a
21 hearing before the jury's brought in; is that correct?

22 MR. RINGGENBERG: Yes, Your Honor. That's
23 correct.

24 THE COURT: All right. Let's try and move
25 through that as quickly as we can, please. And you may do

1 so, Mr. Ringgenberg.

2 MR. RINGGENBERG: Thank you, Your Honor.

3 There's two pieces of evidence that are at
4 issue. One is the deposition, and the other is an expert's
5 testimony which we learned last evening is largely going to
6 attempt to convey the content of that deposition to the
7 jury along with a couple other points.

8 The deposition at issue is Mr. Simmons of
9 CedarCrestone. In that deposition, Mr. Simmons revealed
10 that CedarCrestone had installed local copies of PeopleSoft
11 software on its system and had used those copies to service
12 multiple customers, which is the exact conduct this Court
13 found is not licensed under customer license agreements, on
14 summary judgment.

15 Mr. Simmons defended those practices as lawful
16 in much the same manner that Mr. Ravin has defended them.
17 He said they were consistent with industry practice and
18 authorized by the customer licenses.

19 That testimony, whether directly or through
20 Rimini's expert, is inadmissible for three reasons. It's
21 irrelevant, it's prejudicial, and it's contrary at a
22 fundamental level to their position with regard to
23 TomorrowNow.

24 And it's irrelevant because there's no evidence
25 in the record that anyone at Rimini ever knew what

1 CedarCrestone was doing, or of their contentions that it
2 was lawful.

3 It therefore has no basis -- it's no basis for
4 Mr. Ravin or Rimini to claim it provided them a good faith
5 basis for what they did.

6 Rimini claims that it goes to willfulness
7 regardless of whether Rimini knew about it.

8 And on that point I can't think of better
9 authority than this Court's own *Whittemore* case decided
10 just a couple of years ago. In that case, a criminal
11 defendant was charged with violating federal election law
12 by providing donations or campaign contributions in the
13 names of others.

14 The defendant wished to admit at trial two
15 things, a judicial opinion on the statute at issue that he
16 claims supported his interpretation claiming that a federal
17 judge has read the statute this way, therefore it must be
18 reasonable for me to read it this way, and the second is
19 the expert opinion of a linguist who was prepared to say
20 the same thing.

21 This Court rejected those admissions, including
22 because there was no evidence that the criminal defendant
23 knew about either of them and therefore they could not go
24 to that defendant's good faith.

25 The same is true in this case in exactly the

1 same way. There's no evidence that anyone at Rimini knew
2 what CedarCrestone was doing or that they contended it was
3 lawful, and therefore it can't provide them a good faith
4 basis.

5 On this point, the primary authority that Rimini
6 has supported is the *Safeco* decision from the US Supreme
7 Court. That decision held the conduct was not willful
8 because it was an objectively reasonable reading of the
9 statute at issue in that case.

10 There is no discussion in that case that the
11 conduct was not willful because someone else was doing it.
12 The Court held that in reviewing the language of the
13 statute, the statute was ambiguous and therefore it was
14 a -- it wasn't willful to do what they did since they could
15 have reasonably read it the other way.

16 That has nothing to do with this case where the
17 Court has held that the license terms are clear and
18 unambiguous and certainly has no basis for admitting what
19 someone else thought the license terms meant.

20 The best analogy maybe I can come up with, Your
21 Honor, is tax fraud.

22 Everyone pays taxes in this country. Some
23 people make mistakes, and some people cheat, and there's
24 criminal prosecutions for the cheaters if they can prove
25 that they were knowingly violating the law.

1 It is not a defense in those cases to claim that
2 other people also didn't pay their taxes unless you could
3 show specifically facts that the witness was -- the
4 defendant knew about and relied upon, and that's exactly
5 the same -- that's exactly the same line we think we should
6 draw in this case.

7 Now, the second point is it's prejudicial to
8 causation and damages.

9 I'll be very brief about this, which is, if
10 customers would have left Oracle to go to another
11 infringing competitor, that can't count against us on
12 damages. There's settled law on that, and it's very sound,
13 and I think it's a very obvious principle that you can't
14 avoid the liability for your conduct by saying if I hadn't
15 done something illegal, someone else would have.

16 Rimini has said we will not argue to the jury
17 that CedarCrestone was a noninfringing alternative, but
18 they want to put evidence in front of the jury that
19 CedarCrestone was acting as it did and let the jury draw
20 that conclusion after asking the jury rhetorically in
21 opening argument where are these other customers going.

22 The third point, and perhaps most important, is
23 it's fundamentally inconsistent with their position on
24 TomorrowNow.

25 TomorrowNow pled guilty to criminal charges for

1 having local environments of PeopleSoft, JD Edwards, and
2 Siebel software on their systems. They did so three months
3 before Mr. Simmons testified that his conduct was allowed.

4 Under the same licenses, many customers left
5 TomorrowNow and went to CedarCrestone which means that the
6 exact same licenses were at issue in both cases.

7 So what they want to do is tell the jury what we
8 were doing is fine, CedarCrestone thought it was fine,
9 while withholding from the jury evidence that someone else
10 in the industry not only did not think it's fine, but was
11 willing to plead them guilty to criminal charges for
12 exactly the same thing.

13 They have claimed there's no evidence that
14 TomorrowNow's practice is parallel, and there isn't in the
15 record, because we haven't admitted it because of the line
16 the Court has drawn, which we respect. We are not asking
17 the Court to admit this evidence. But it is there. It's
18 in front of the Court. The Court knows the conduct is
19 parallel.

20 So to allow them to introduce a different third
21 party with parallel conduct and their contentions of
22 legality, while withholding TomorrowNow's admission that
23 that same conduct was not only illegal but criminal, we
24 think would be fundamentally unfair.

25 I think the last point I would make, Your Honor,

1 is in the brief they filed this morning they suggested that
2 Mr. Ravin had testified specifically about reliance on
3 industry custom.

4 If you look at his testimony, he cites three
5 things. He cites the terms of licenses, and that's the --
6 probably 90 percent of his testimony.

7 He cites a specific instance where he says I
8 knew Siebel was authorizing third parties to do some
9 maintenance -- or, pardon me, to do some level of customer
10 assistance.

11 And if Mr. Hilliard is going to testify that
12 that's true, that Siebel did authorize that, we have no
13 problem with that because Mr. Ravin has established a
14 specific factual basis, I knew about this fact, and I
15 relied upon that fact. So if Mr. Hilliard wants to
16 corroborate that specific fact, we have no issue with that.

17 But there is no basis in Mr. Ravin's testimony
18 to say I knew about CedarCrestone or the other various
19 companies that Mr. Hilliard is prepared to testify about.

20 Let me mention -- let me just refer briefly to
21 that separate issue which is not CedarCrestone, it's three
22 other companies that are addressed in Mr. Hilliard's
23 testimony. Those companies are Astute Labs, Summit
24 Technologies, and Hexaware.

25 And Mr. Hilliard wants to say those companies

1 were offering apparently similar services, and therefore
2 what Mr. -- what Rimini was doing was consistent with
3 industry practice.

4 But those companies, all he has is websites,
5 there's no actual evidence they did what they claimed they
6 did, and all three of the websites were pulled in 2012.

7 There's no evidence that anyone at Rimini knew
8 of or could have known about those claimed facts which were
9 after the close of discovery which means they're not
10 relevant to Rimini's good faith.

11 I tried to be brief. Thank you.

12 THE COURT: Thank you very much,
13 Mr. Ringgenberg.

14 Mr. Reckers.

15 MR. RECKERS: Yes, Your Honor.

16 Let me just start by reframing what the evidence
17 will show in this case.

18 The evidence will show that there was publicly
19 available information regarding what Oracle's own partners,
20 in particular CedarCrestone, who was their largest
21 PeopleSoft dedicated supporting firm, they have over 400
22 PeopleSoft consultants, was -- had a very close
23 relationship with Oracle receiving their partnership awards
24 year after year, had the exact same practices as Rimini
25 Street.

1 This was publicly known. Rimini Street knew of
2 it. Rimini's original answer in this case listed
3 CedarCrestone as a basis for reliance on its license
4 interpretation.

5 Rimini had in its possession at that time
6 Defendants' Exhibit 22, which has been already admitted in
7 this case by stipulation.

8 In Defendants' Exhibit 22, we see CedarCrestone
9 say very clearly -- and this was a -- this was a response
10 to a request proposal obtained after an open information
11 request for Oklahoma City, that what CedarCrestone would do
12 is create an environment in CedarCrestone's own data center
13 and do development for them.

14 That's the conduct that's accused in this case.
15 That's the subject of Your Honor's original summary
16 judgment ruling.

17 Rimini was aware of this information, Rimini
18 relied on it, and it relied in part on the partnership
19 between Oracle and CedarCrestone, again, this large
20 consulting firm, this close partner, to inform its beliefs.

21 Mr. Rowe who will testify tomorrow or on
22 Wednesday, head of marketing at Rimini Street, he will
23 testify that Rimini kept competitive intelligence on other
24 industry players through research such as this, open
25 records requests, web searches, the exact same type of

1 information that Mr. Hilliard, our industry expert, looked
2 at when he asked the question, when I go out to investigate
3 and to research what other people did, what information is
4 available?

5 We find CedarCrestone material. We find these
6 websites. Time after time we find Oracle partners saying
7 that they will host Oracle software on their facilities.

8 We asked Oracle in discovery for the licenses
9 for these people. We did not get them back.

10 We asked CedarCrestone, "Where's your license
11 for these services?" They said, "We don't rely on those
12 licenses, we -- or special license with Oracle, we rely on
13 the customer license."

14 We heard from Ms. Catz last week Oracle has
15 licenses with its partners for support. Okay?

16 We went to the most -- the largest PeopleSoft
17 vendor and asked for the license. They said they didn't
18 have one.

19 That was consistent with Rimini's understanding,
20 as Mr. Rowe will testify, this is -- this is Rimini's
21 evidence of good faith. This is our evidence that we
22 specifically relied on the things that Mr. Hilliard will
23 speak to the jury about, what Mr. Simmons testified to.

24 Mr. Simmons was a 20-year veteran of the
25 PeopleSoft consulting industry. Mr. Simmons had 450

1 PeopleSoft consultants that worked for him. He worked
2 closely with Oracle through the years.

3 Oracle, I'd submit, was involved -- and we'll
4 see in his testimony, involved with CedarCrestone's
5 practices. It was reasonable for Rimini Street to rely on
6 what they learned publicly from CedarCrestone, what we
7 confirmed in Mr. Simmons' deposition, and that evidence is
8 our good faith.

9 Now, just to quickly hit on the cases that
10 counsel mentioned, the *Whittemore* case -- the *Whittemore*
11 case is distinguishable because in this case we will have
12 the testimony of -- from Rimini, again from our -- starting
13 from our answer throughout the case that we've relied on
14 CedarCrestone.

15 The *Safeco* case I would submit to Your Honor is
16 exactly on point. It shows that a reasonable
17 interpretation based on evidence, again, here that we were
18 aware of, that Rimini Street was aware of, is a defense on
19 issues like this matter.

20 *Safeco* further confirms that this evidence is
21 relevant to punitive damages. This is not intentional.

22 And the jury at this point has a view that
23 Rimini is this rogue organization doing things that no
24 reasonable company would do. We have a longstanding,
25 decorated Oracle partner that did this same thing.

1 This isn't a TomorrowNow situation. This is a
2 counterexample. TomorrowNow is not relevant because of the
3 tie to Mr. Ravin. Mr. Ravin was the founder of
4 TomorrowNow. That relationship makes it -- for the
5 criminal piece that isn't in yet, irrelevant under 403 as
6 unfairly prejudicial.

7 But this is a counterexample. This shows that
8 someone else was doing the same thing, someone that Oracle
9 blessed.

10 And that's essentially my argument, Your Honor.
11 I'm happy to address any points that you have.

12 THE COURT: Well, I -- this issue is -- carries
13 a number of considerations with it, not the least of which
14 is the fact that CedarCrestone's CEO, or chief operating
15 officer, later admitted that whatever we're doing was
16 clearly in violation.

17 MR. RECKERS: Can I address that, Your Honor,
18 briefly?

19 THE COURT: Yes.

20 MR. RECKERS: Oracle, after discovery in the
21 case, sued CedarCrestone, and then there was a confidential
22 settlement.

23 THE COURT: But I don't need to hear that.

24 MR. RECKERS: The fact is I don't know -- I
25 don't know --

1 THE COURT: I mean, TomorrowNow and
2 CedarCrestone are so commonly raised in this case that it
3 strikes the Court that if you're going to raise them, you
4 need to raise the whole picture, and pretty much left that
5 to the defense insofar as to -- I haven't ruled it
6 admissible, but I certainly recognize as the defense tends
7 to open these areas, the complete picture needs to be
8 developed.

9 I just give that to you as a warning. I'm not
10 giving you that as a ruling at this time, and I'm not
11 ruling on the issue that's before the Court in that
12 respect.

13 But with regard to the issue before the Court,
14 the Court does not see -- I do not see evidence in front of
15 me at this time of knowledge and awareness on behalf of
16 defendants that would allow the Simmons' deposition,
17 30(b)(6) deposition, taken a number of years ago to be
18 admitted in this case.

19 I'm not saying it's not admissible, but what I
20 am saying is that some greater foundation needs to be shown
21 of knowledge and awareness on behalf of defendants and
22 Rimini Street.

23 I don't have that in front of me, and there
24 hasn't been a sufficient showing at this time, and I'm not
25 going to allow Rimini to present the 30(b)(6) deposition by

1 videotape of Simmons until such a showing has been made.

2 I give you the further notice that you need to
3 be aware that when you start probing into CedarCrestone and
4 you start probing into TomorrowNow, you're inviting an
5 opening of the door as to the very issues that you've been
6 so concerned about with regard to that evidence.

7 And I'm not ruling on it because I haven't heard
8 the evidence, I don't know what it is, but I -- I just see
9 this -- the potential for all of that developing.

10 MR. RECKERS: I understand, Your Honor.

11 So that leaves me at a conundrum. Our plan was
12 to present Mr. Hilliard today who relies on the
13 CedarCrestone material.

14 But -- and so Mr. Webb makes a suggestion, and
15 that is I can present half of Mr. Hilliard today, we can
16 present Mr. Rowe tomorrow, and then I would seek leave of
17 the Court to recall Mr. Hilliard to -- if my client
18 approves, to present his remaining two opinions that do
19 address industry practice.

20 I don't want to have some dead time because of
21 our plans in that regard.

22 THE COURT: I appreciate that. Let me hear a
23 response on behalf of plaintiffs to that proposal.

24 MR. RINGGENBERG: What we would say, Your Honor,
25 is whatever Mr. Hilliard testifies about today, our

1 position is they have to have foundation for it, and we
2 think, other than a couple Oracle documents which we now
3 object to, there isn't any foundation for any of his
4 testimony about third-party -- about alleged third parties
5 that supposedly do these things of which Rimini was aware
6 and relied upon.

7 So while we focus on CedarCrestone, there's
8 others, and that presents the same issue as far as notice
9 and awareness by Rimini Street. So I would raise that.

10 I think if the issue -- if the issue is just
11 calling him back now versus later, that's -- as an
12 evidentiary matter of calling the same witness twice,
13 that's not a problem for us.

14 But I do want to make sure the Court's clear
15 that we do not believe there's a foundation of any of his
16 testimony about industry practice other than the specific
17 testimony Mr. Ravin provided about what Siebel does, which,
18 frankly, is not in his report or any demonstratives they've
19 disclosed to us. He doesn't want to testify about that as
20 far as we know.

21 That's our response, your Honor.

22 THE COURT: All right. I will allow
23 Mr. Hilliard to testify to the areas indicated, the subject
24 matters indicated, and we'll leave the disputed portion out
25 there for the time being.

1 MR. RINGGENBERG: Thank you, Your Honor.

2 THE COURT: All right. Okay.

3 Is there another issue counsel wanted to
4 address?

5 MR. RINGGENBERG: No, Your Honor. That's the
6 one that's ripe at this time.

7 MR. WEBB: I think that's all, Your Honor.

8 THE COURT: All right. We'll take a brief
9 recess, and, Madam Clerk, let me know when the jury's here.

10 COURTROOM ADMINISTRATOR: Yes, Your Honor.

11 Please rise.

12 (Recess from 1:00 p.m. until 1:08 p.m.)

13 (Jurors enter courtroom at 1:08 p.m.)

14 COURTROOM ADMINISTRATOR: Court is again in
15 session.

16 THE COURT: Good afternoon. Have a seat,
17 please.

18 The record will show we are in the open court.
19 The parties and counsel are present. The jury is all
20 present.

21 Ladies and gentlemen, I welcome you here, and I
22 hope you had a pleasant weekend.

23 We finished on Friday with presentation of the
24 early evidence on behalf of the defense.

25 And, Mr. Reckers, you may go forward at this

1 time.

2 MR. RECKERS: Thank you, Your Honor. The
3 defense calls Jim Benge.

4 COURTROOM ADMINISTRATOR: Please raise your
5 right hand.

6 You do solemnly swear that the testimony you
7 shall give in the cause now before the Court shall be the
8 truth, the whole truth, and nothing but the truth, so help
9 you God?

10 THE WITNESS: I do.

11 COURTROOM ADMINISTRATOR: Please be seated.

12 Please state your name and spell your name for
13 the record.

14 THE WITNESS: James Benge; J-a-m-e-s B-e-n-g-e.

15 COURTROOM ADMINISTRATOR: Please tell us your
16 city and state of residence.

17 THE WITNESS: Livermore, California.

18 COURTROOM ADMINISTRATOR: Thank you.

19 All right. Mr. Reckers, go ahead, please.

20 JAMES BENGE

21 called as a witness on behalf of the
22 Defendants, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. RECKERS:

25 Q. Mr. Benge, could you please introduce yourself to

1 the jury.

2 A. Sure. My name is Jim Bengé. I was born and raised
3 in San Diego, California, and that's where I met my wife
4 Gayla. We've been married for 27 years, and we have three
5 sons and a daughter.

6 I volunteer in the Boy Scouts, and all three of
7 my sons are Eagle Scouts. And I also spend a lot of time
8 with my daughter in her youth soccer league.

9 We moved up to northern California, Bay Area,
10 after graduating from college, for employment. And my
11 wife's a music teacher, and I'm in the software field.

12 Q. How long have you been in the software industry,
13 Mr. Bengé?

14 A. Nearly 30 years.

15 Q. And so before we talk about -- well, let me ask you
16 this. Where do you work?

17 A. I work at Rimini Street.

18 Q. What is your title at Rimini Street?

19 A. Vice-president of PeopleSoft Development.

20 Q. Okay. Before we talk about your work at
21 PeopleSoft -- or on PeopleSoft Development at Rimini
22 Street, I want to ask you a little bit about your
23 background.

24 How did you get into computer programming?

25 A. I became interested in it when I was in high school;

1 pretty young. Personal computers were just coming out in
2 the early '80s, and our high school had just gotten a
3 couple of personal computers and offered the first computer
4 programming classes. And took one of those and got hooked
5 on it, and then started taking some classes at a local
6 community college in it as well.

7 Q. Did you go on to study computer programming in
8 college?

9 A. I did.

10 Q. And did you obtain any college degrees?

11 A. Yes, a couple. At community college I received an
12 associate's degree, a two-year degree in computer science,
13 and then I went on to earn a four-year degree in
14 information systems.

15 Q. Did you ultimately decide to make a career out of
16 computer programming?

17 A. I did. It was something I wanted to work on very
18 early on.

19 Q. What was your first job out of school?

20 A. My first major job I got through the college
21 placement center after graduating, and landed a job at a
22 company called American Management Systems up in Silicon
23 Valley where a lot of startup companies were, high tech
24 companies.

25 Q. What year was this?

1 A. That was in 1988.

2 Q. What were your responsibilities at American
3 Management Systems?

4 A. I started out as a developer doing programming,
5 mostly for banking applications, banking software.

6 Q. Were you promoted at American Management Systems?

7 A. Yeah, I was.

8 Q. And how long did you work at American Management
9 Systems?

10 A. About five years.

11 Q. So that takes us to about '93?

12 A. Yes.

13 Q. Okay. So in '93 where did you go work for -- where
14 did you go work?

15 A. That's when I went to work for PeopleSoft.

16 Q. Okay. So why did you decide to join PeopleSoft?

17 A. Mostly because they were doing some pretty
18 cutting-edge stuff.

19 At American Management Systems the work I was
20 doing was all on old mainframe computers, and at PeopleSoft
21 they were doing something that was really new at the time,
22 client server architecture using smaller machines, not
23 using mainframes. So it was interesting stuff to be
24 involved in.

25 Q. And how long did you work for PeopleSoft?

1 A. I was there for a long stretch, 12 years at
2 PeopleSoft. And then after the takeover by Oracle, I
3 stayed on an additional three years.

4 Q. Now, when you joined PeopleSoft in '93, how big a
5 company was it?

6 A. It was still relatively small. They had just gone
7 public the year before. We were still in a small office
8 building up in Walnut Creek. I was employee number 340
9 when I started there.

10 Q. What does it mean to be employee number 340?

11 A. PeopleSoft made a big deal out of that. When you
12 got hired, you actually got a T-shirt with your employee
13 number. They just assigned them sequentially as people
14 were hired.

15 A few people had left, so by the time I joined,
16 there were probably fewer than 300 people total in the
17 company.

18 Q. If you could describe for the jury the work that you
19 first did when you joined PeopleSoft.

20 A. Yeah. When I first started I was working on
21 utilities that helped clients upgrade from one release to
22 the next. So when PeopleSoft would come out with a new
23 release, these upgrade utilities would be what they used to
24 help them make the transition from one release to another.

25 Q. And at PeopleSoft were you promoted to any

1 management positions?

2 A. I was.

3 Q. Can you give the jury a sense of your promotions at
4 PeopleSoft?

5 A. It wasn't long after I was there, actually, I got
6 promoted to be development manager. So I was development
7 manager over a couple of different functional areas in the
8 product.

9 Q. Okay. So what does it mean to be a development
10 manager? Does that have to do with programming?

11 A. I was still doing some programming, but I was also
12 leading a small team of developers, anywhere between 6 and
13 20 developers.

14 Q. Okay. And what kind of projects did you and your
15 development teams work at while you were at PeopleSoft?

16 A. One of them was to upgrade utilities, which I
17 mentioned.

18 I also managed the security team that handled
19 the security functionality within the product for a couple
20 of years.

21 I was also involved in building our tool called
22 Application Designer. It's kind of an integrated
23 development environment that the developers used to build
24 the applications we actually sold, the HR and financials
25 applications.

1 Q. Can you provide us a little more detail on your
2 contribution to PeopleSoft security features?

3 A. Yeah. In that role I was responsible for pretty
4 much all the aspects of security and the function --
5 security functionality, things like authentication. So the
6 functionality having to do with, when a user logs in,
7 making sure that their password's validated and they're
8 actually supposed to be getting into the application.

9 The authorization and access control, once they
10 get into the application, what kind of things can they do,
11 what pages can they get to, what data can they pull up.

12 And then also the audit-type functionality. So
13 once a user's in and accessing things, keeping a record of
14 the transactions that they're performing.

15 Q. How many years did you spend at PeopleSoft
16 developing the PeopleSoft application?

17 A. Twelve years.

18 Q. Okay. And over those 12 years were there any aspect
19 of the PeopleSoft program that you did not become familiar?

20 A. No. Twelve years working with a product, I pretty
21 much knew it inside and out.

22 Q. Now, at PeopleSoft did you receive any recognitions
23 or awards for your work developing PeopleSoft software?

24 A. I did, several.

25 Q. And can you give the jury a sense of what those

1 recognitions were?

2 A. Yeah. I received a couple of PeopleSoft hero awards
3 they called them, one for release 7.5, one for release 8,
4 which was a major release where we Internet enabled the
5 software so it would work over the Internet.

6 I also received outstanding contributor award in
7 2003.

8 Q. And how did PeopleSoft grow as a company from the
9 time that you started in '93 till the Oracle takeover in
10 2005?

11 A. It was really explosive growth at the company.

12 We started out, again, being a small company on,
13 you know, one floor in a small office building in Walnut
14 Creek, and by the time of acquisition, of the takeover, we
15 were relocated down into Pleasanton and we had a sprawling
16 campus with multiple 5-story buildings full of people.

17 Q. Did there come a time when you decided to leave
18 Oracle and join Rimini Street?

19 A. Yes.

20 Q. And about when was that?

21 A. That was in 2008.

22 Q. Okay. And why did you apply for a position at
23 Rimini Street?

24 A. Primarily because I wanted to get back to working on
25 the PeopleSoft product.

1 After the takeover, Oracle reassigned me to work
2 on the application technology group. So I was working on a
3 totally different area. I wasn't really thrilled about it.

4 I was pleased that I didn't get laid off because
5 a lot of the people after the takeover got laid off. I got
6 kept.

7 But I wanted to keep working on the product that
8 I had had dozens of years of experience with, and I thought
9 that Rimini Street offered that opportunity.

10 And I knew that there were a lot of clients out
11 there that were going to continue running the software for
12 years to come.

13 Q. How big a company was Rimini Street when you joined
14 in 2008?

15 A. It was also quite small. We were on one quarter of
16 one floor in an office building, maybe several dozen
17 employees at most.

18 Q. What were you hired at Rimini Street to do?

19 A. I was brought on as director of PeopleSoft
20 Development. So in that role I was responsible for the
21 team that prepared the tax, legal, and regulatory updates
22 that we provide to our clients to keep them in -- to keep
23 the product in compliance with all the tax laws.

24 Q. Does that scope of responsibility remain the same
25 today?

1 A. Yes, very similar.

2 Q. Okay. Now, one thing that we haven't touched on
3 much in this trial is what the people at Rimini Street
4 actually do. So that's what we're going to talk to you
5 about today as the head of PeopleSoft Development.

6 So let's start with the developers. Let me ask
7 you. When Rimini hires developers, what characteristics
8 are you looking for in members of your development team?

9 A. Well, we're looking for seasoned, experienced
10 people. Generally the people we're hiring have, like, 10
11 years of experience working with this product.

12 They're people that have maybe been in the
13 consulting industry and consulting with clients on
14 PeopleSoft implementations.

15 In this type of role, we're not hiring people
16 straight out of college to help us. We want people that
17 know the product and can jump in and work on it right away.

18 Q. Okay. So let's talk about what your team and what
19 your developers do to actually provide tax and regulatory
20 updates for clients. Again, my questions are going to be
21 from before 2012.

22 And did you prepare a demonstrative to help
23 illustrate the overall PeopleSoft Development process?

24 A. Yes.

25 Q. Do we have on the screen the diagram you helped us

1 put together in that regard?

2 A. Yes.

3 Q. Okay. So let's -- and there's obviously a lot of
4 boxes here.

5 Can you give us sort of a high-level,
6 10,000-foot view of what we're looking at in the
7 demonstrative.

8 A. Yeah. It's kind of a flow chart of the overall
9 development process. This is something that's pretty much
10 a standard in the industry.

11 You'll hear of the software development
12 lifecycle. At the highest level, you're going through and
13 doing analysis, determining what you're going to need to
14 change, and then doing development, actually making the
15 changes, and then quality assurance, actually testing the
16 changes and making sure that they're doing what they're
17 supposed to do, and then packaging and delivering to the
18 client.

19 Q. Okay. So let's start at the beginning, and that is
20 this, how a development assignment comes into the process.

21 So how do you start a development project at
22 Rimini Street?

23 A. There's really one of two ways. Looking at this
24 diagram and starting at the upper left, one way that the
25 process starts is by a client calling their primary support

1 engineer and reporting a problem.

2 You know, maybe they're trying to do a payroll
3 run, trying to get paychecks cut, and the process has
4 crashed for some reason. They call.

5 The support engineer determines it's a bug. At
6 that point it would be passed to the development team for
7 us to begin work on.

8 Q. Okay. Let's stop there. So we've heard that Rimini
9 has PSEs who take calls from clients when they're having a
10 problem; is that right?

11 A. Yes.

12 Q. And so one way the development project starts is
13 when the client's having a problem with their system that
14 needs development; is that right?

15 A. That's correct.

16 Q. Okay. Now, what's the other way that's shown on
17 your demonstrative for a development project to start?

18 A. Yeah, this is starting from the right-hand side
19 going left. This is actually a far more common scenario.

20 This is where the group of individuals we have
21 that do tax and regulatory research latch onto some kind of
22 a change that's going to impact the product.

23 So they've identified -- you know, maybe they've
24 found something that says the California minimum wage is
25 going up to \$10 an hour effective January 1st.

1 From that they would create a change memo, what
2 we call a change memo, with all the information about this
3 change and the source where they got the information from.
4 In that case, it would probably be from a California state
5 website. And that change memo gets reviewed and approved,
6 and then ultimately passed along to the business analysts.

7 Q. Okay. Can you tell us a little bit more about the
8 research group that you mentioned.

9 A. Yeah, it's just a team of individuals that are kind
10 of broken up by various countries, because we do tax and
11 regulatory updates for the world.

12 You know, we've got people doing tax and
13 regulatory research for Brazil and Australia and India.
14 PeopleSoft is mostly North American focused, but we do have
15 some global payroll clients.

16 That group does all that research. Like I said,
17 those change memos get reviewed by some senior members of
18 that team and then passed into the development
19 organization.

20 Q. Okay. So when you have a change coming from your
21 research group, or from your primary support engineers,
22 they go to, on the screen, a business analysis function; is
23 that right?

24 A. Yes, that's correct.

25 Q. And what is the business analysis function at Rimini

1 Street?

2 A. The business analyst is going to determine the
3 relevance to the various product lines we support, so not
4 only the PeopleSoft product line, but we also support and
5 provide maintenance for SAP, JD Edwards, Siebel, other
6 product lines.

7 They'll take a look at the change memo and
8 determine if this is something that impacts the product.

9 So, in my case, they're going to be determining
10 for me if this is going to impact the PeopleSoft product.
11 Something like the minimum wage change would because
12 PeopleSoft supports that.

13 On the other hand, sometimes there's things like
14 local minimum wages, like San Francisco has a specific
15 minimum wage, that's something that the product, the
16 PeopleSoft product, at least, doesn't support. Some of the
17 other product lines do.

18 So the business analyst is reviewing all these
19 change memos and just determining relevance to the product
20 line.

21 Q. Okay. So then after the business analysis, we go on
22 to the scoping function; right?

23 A. Right. That's where they're making a determination
24 about which clients are going to get this update.

25 One thing we do a little bit differently than

1 Oracle is that we offer clients the choice of being able to
2 just get updates for particular geographic regions.

3 So, for example, we have some clients that are
4 in Canada that only want the tax updates for the Canadian
5 provinces. They don't want all of the US-based stuff, all
6 of the reports and tax tables.

7 So, for example, the California minimum wage
8 change that I just mentioned wouldn't be at all relevant to
9 the clients that are in Canada only.

10 Q. Okay. So once the scoping is done, you move on to
11 the functional analysis; is that right?

12 A. Yes, sir.

13 Q. What is that?

14 A. That's where the business analyst is putting
15 together a functional design for the changes that need to
16 be made.

17 The data changes are really simple. Sometimes
18 it's far more complex. I'm sure you guys have heard about
19 the Affordable Care Act, and that's a recent thing that
20 came in that had a big product impact. There's a lot of
21 changes associated with that. So the design for that
22 was quite lengthy.

23 Q. Now, does there come a point in the development
24 process where the developers need to access the PeopleSoft
25 source code?

1 A. Yes.

2 Q. Okay. And so how is it that the Rimini developers
3 are able to view the source code underlying PeopleSoft?

4 A. So, one of the things that's unique about the
5 PeopleSoft product is that it's delivered -- the
6 application is delivered with the source code.

7 Most of you are probably familiar with
8 off-the-shelf commercial software where you just get the
9 program, and you can run the program, but you don't get the
10 source code that goes along with it.

11 With PeopleSoft, when you get the application,
12 you have the ability to customize it because you have the
13 source code, you can tailor it.

14 And that was a really big selling point for
15 PeopleSoft, because these large enterprises that have
16 really complex business processes could purchase the
17 software and then could go in, because they had the source,
18 they could change it, they could tailor it to their unique
19 business requirements.

20 MR. RECKERS: Marie, could you pull up
21 Plaintiffs' Exhibit 286, and show Mr. Bengé -- I believe
22 there's no objection, but I would move for admission of
23 Plaintiffs' Exhibit 286.

24 MS. DUNN: No objection to the exhibit as
25 redacted.

1 THE COURT: It is admitted.

2 (Plaintiffs' Exhibit 286 received into
3 evidence.)

4 MR. RECKERS: Marie, if you could zoom in on the
5 front page, please.

6 BY MR. RECKERS:

7 Q. Mr. Benge, do you recognize what's shown on the
8 screen, Plaintiffs' Exhibit 286?

9 A. Yes. This is a PeopleSoft program. This particular
10 one is a program that generates a report and submits
11 electronically W-2 information. You guys are probably all
12 used to getting a W-2 at the end of the year with your
13 earnings.

14 In many cases, employers are also required to
15 submit that information electronically to the state, and
16 that's what this program does is it produces the electronic
17 file with all of the employee information in it to
18 transmit.

19 Q. So as we see on the screen, this is a 74-page
20 document. We're looking at the first page.

21 And my question, Mr. Benge, is does PeopleSoft,
22 as an application, have a variety of programs such as this
23 exhibit to help -- to help the payroll system, the
24 PeopleSoft payroll system, submit information to, for
25 example, state governments for tax purposes?

1 A. Yes, thousands of programs like this.

2 Q. Okay. And is one thing that your group does is
3 periodically update these programs within PeopleSoft to
4 help it run in compliance with updated tax -- or updated
5 laws and regulations?

6 A. Exactly.

7 Q. Okay. So can you tell, Mr. Bengé, how Rimini Street
8 updated this particular file?

9 A. Yeah, the quickest and easiest way to determine
10 that, if you look at this exhibit here, there's a Rimini
11 Street modification log.

12 So you'll find a section here at the top of the
13 program, this is where we put comments in the program about
14 anything that we're going to change.

15 Q. We're zooming in right on that.

16 So this is the Rimini Street modification log
17 that you mentioned, Mr. Bengé?

18 A. Yes, it is.

19 Q. Okay. And so the first change, or the change that
20 we see here listed, is from September 12, 2008. Do you see
21 that?

22 A. Yes.

23 Q. And this change is designated RSI-HCM 100370?

24 A. Yes. That was the development tracking number.

25 Q. What does that indicate?

1 A. Every change that we're going to make, so every one
2 of those changed memos that comes in that results in the
3 development team having to do some work, is assigned a
4 unique development tracking ID, and that ID is listed in
5 the code when we make the code changes.

6 Q. And does Rimini make clear to its clients how Rimini
7 changed the code?

8 A. Yes, very clear, through the modification log. And
9 further down in the program you'll see around each of the
10 changes we make, we'll put markers around the changes that
11 we make.

12 MR. RECKERS: So let's go to the next page,
13 Marie, please.

14 So you just mentioned markers. So let's look at
15 the next page of this program. Again, we skipped ahead to
16 page 26 of the exhibit.

17 And let's zoom in on -- let's zoom in, Marie, on
18 the marker that would be about eight lines down. Says
19 begin RSI. There you go.

20 BY MR. RECKERS:

21 Q. So, Mr. Benge, you see on the screen text that says
22 begin RSI-HCM 100370. Do you see that?

23 A. Yes.

24 Q. And what does that begin marker indicate to you?

25 A. That marker indicates the beginning of the changes

1 that we had to insert into the program.

2 In this case it was because Idaho came out with
3 a new requirement. They said when you send us this file
4 with all this W-2 information in it for each employee, we
5 want a total record at the bottom of the file that totals
6 up all of the entries that were in the file.

7 So we added a whole new procedure to compute all
8 of those totals and to write that record to the file for
9 Idaho.

10 Q. Okay. So Idaho changed its regulations as to how
11 payroll information was submitted for tax purposes;
12 correct?

13 A. Yes.

14 Q. And Rimini personnel came in and modified this
15 particular program to account for those changes; is that
16 right?

17 A. Yes, it is.

18 MR. RECKERS: So now, Marie, can we just scroll
19 down for the next three pages to see what the Rimini
20 personnel did.

21 THE WITNESS: So lots of lines of code here just
22 computing all the totals, writing the record out to the
23 file.

24 MR. RECKERS: And that's fine, Marie.

25

1 BY MR. RECKERS:

2 Q. And if you look just right at the top or right at
3 the top of page 9 -- 29, okay. Now, do you see the
4 end-procedure tag, Mr. Bengé?

5 A. Yeah. And then there's the exclamation mark, end
6 RSI HCM 100370, that's the marker indicating the end of our
7 changes in the program.

8 Q. Okay. So what was the three pages of text that we
9 just scrolled through?

10 A. That was all of the code that the Rimini Street
11 developers had to write in order to fulfill the new
12 requirement from Idaho.

13 Q. And then what is the result of Rimini's developer
14 making these changes designated as HCI HCM 100370?

15 A. Well, without these changes, if an employer had ran
16 this program and tried to submit the file to the state of
17 Idaho, Idaho would have sent them back a rejection, so, you
18 know, the information wouldn't have been accepted, they
19 would have to redo it.

20 With these changes, it made it so that the file
21 would be accepted by the state.

22 Q. Now, did Oracle also provide an equivalent update to
23 address this Idaho change?

24 A. Yes, they would have had to.

25 Q. Okay. And did Rimini rely on the Oracle provided

1 update to generate the Rimini update?

2 A. No, we did not.

3 Q. How do you know that?

4 A. Generally our bundles, our tax, legal, and
5 regulatory bundles, are delivered about a week prior to
6 Oracle's equivalent updates.

7 Q. Okay. Now, to make these changes -- well, okay.
8 So -- well, let me ask you this.

9 To make these changes, Rimini had to use a copy
10 of Oracle's software; correct?

11 A. Yes.

12 Q. PeopleSoft software?

13 A. Yes.

14 Q. And prior to 2012, did Rimini use development
15 environments?

16 A. Yes, we did.

17 Q. What are development environments?

18 A. An environment where you go about making your
19 changes, keeping it completely separate from the production
20 system.

21 With a large enterprise application this
22 complex, you definitely don't want to be messing with your
23 production system while you're making changes.

24 So the development environment allows us to go
25 in there and make our modifications and make sure that

1 everything's right before we move it into -- you know,
2 before the client moves it into a production system.

3 Q. When did you first learn of the concept of
4 development environments?

5 A. Right away when I started at PeopleSoft, and the
6 first upgrade class I took they definitely talked about
7 clients having multiple environments as part of the upgrade
8 process, and migrating changes between environments as they
9 go about completing an upgrade.

10 Q. Now, prior to 2012, did Rimini have environments on
11 its own servers?

12 A. Yes, we did.

13 Q. And so -- and, again, prior to 2012, did Rimini have
14 environments that were hosted on its client servers?

15 A. Yes, we did.

16 Q. Okay. So what percentage in that time period of the
17 clients had Rimini-hosted environments versus client-hosted
18 environments?

19 A. About 80 percent, the majority, were in-house. The
20 remaining percentage, about 20 percent, were client-hosted
21 environments.

22 Q. And, again, in that timeframe, how did the
23 development process differ between the clients with and
24 without the Rimini-hosted environments?

25 A. The development process was really very similar,

1 but, you know, there are some differences in terms of --
2 with the remote environments having to go through extra
3 steps to connect to the client machine, to log in to the
4 client machine, as opposed to having those environments on
5 site, but the process was very similar.

6 Q. Okay. And let's quickly talk about database. Did
7 the development environments that Rimini had on its system
8 include databases?

9 A. Yes, they did.

10 Q. What --

11 A. That was a requirement of the PeopleSoft product.

12 Q. Excuse me. What brands of database did Rimini use
13 with its environments?

14 A. Multiple. We -- we were using Microsoft SQL Server,
15 Oracle, IBM DB2 and Informix. And PeopleSoft also
16 supported Cybase.

17 Q. Okay. And did the brand of database offer support
18 environment or development environment need to match the
19 brand of database in the client's production system?

20 A. No, not necessarily. In fact, we had a few clients
21 where it didn't match.

22 Q. What do you mean it didn't match?

23 A. Clients that were running Informix in production and
24 in development, we were developing their tax and regs
25 updates using Microsoft SQL Server.

1 MR. RECKERS: Let's go back to the process
2 diagram, please, Marie.

3 BY MR. RECKERS:

4 Q. So we've been talking about the blue development box
5 there in the middle. So once the developer has typed out
6 the code like we saw on Plaintiffs' Exhibit 286, what comes
7 next in the process?

8 A. Well, a developer has a few more steps there.

9 The developer's got to go through unit testing,
10 and there's also a development review that takes place.

11 But after that, it gets handed off to the
12 quality assurance team, and that's a completely independent
13 team that does their own testing, they prepare a test plan,
14 and they do their own testing on the changes to verify that
15 they're working like they should.

16 Q. Okay. Could you give the jury a sense of what steps
17 Rimini takes to provide for quality assurance of its
18 updates?

19 A. Yeah, it's pretty extensive.

20 Well, the data change that I mentioned, they're
21 definitely going to be going into the application and
22 pulling up the tax table and verifying that the minimum
23 wage was, in fact, entered with the new effective date.

24 Larger changes, like I mentioned with the
25 Affordable Care Act, they're going to be going through and

1 running processes, running payrolls, verifying that checks
2 are coming out as they should, that the withholdings are
3 happening the way that they should and everything is
4 computing properly.

5 They prepare a pretty thorough test plan.

6 Q. Okay. And then after the quality assurance we see
7 on the screen, the packaging and bundle testing, do you see
8 that?

9 A. Yes.

10 Q. And what does that refer to?

11 A. So up to this point we've been working on individual
12 updates. We don't release -- don't generally release all
13 the updates individually. Rather, what we do is we collect
14 them into what we call bundles and release those.

15 So we package together anywhere between 50 and
16 100 individual updates into a bundle, and then the QA team
17 goes through another set of testing. This is where they're
18 testing the full bundle with all these changes in it.

19 And then after that, it's packaged up for --
20 final packaging with the documentation for delivery.

21 Q. So I think the last box that we have before delivery
22 is documentation. And does Rimini produce its own
23 documentation?

24 A. Yes, we do.

25 Q. Can you explain what Rimini does in that regard?

1 A. It's pretty extensive.

2 Along with each bundle that we release, there's
3 several documents that the clients get.

4 The biggest document is called the notes
5 summary, and that's the one that has the information in it.

6 Kind of from a functional perspective, it's the
7 document that would be geared towards like the payroll
8 manager, and it's going to describe to them all of the
9 updates that we're including in the product so that they
10 fully understand, you know, what this update's going to do
11 to their system when it gets installed.

12 And then there's also installation instructions
13 that are delivered. The installation instructions are more
14 technical. They're geared toward the technical staff that
15 are going to be applying the update to the environment.

16 And then we also include the list of all the
17 objects that have changed in the bundle, the batch objects,
18 the online objects, and so forth.

19 Q. So we've just gone through the process from start to
20 finish.

21 Actually, let me ask you this. For a given
22 update, are they interchangeable between clients?

23 A. Only in certain circumstances, and this has to do
24 with the application release that the clients are on as
25 well as the last tax update that they received from Oracle.

1 So, for example, it's going to be like apples
2 and oranges, the update between a client that's on release
3 7.5 and a client that's on release 9.0.

4 Q. Does Rimini tailor its updates to a particular
5 client's system?

6 A. Yes, we do.

7 Q. How does Rimini do that?

8 A. Oh, in a number of different ways.

9 Earlier I mentioned the fact that we'll tailor
10 it based on geographic location. So, for example, we have
11 clients that are in Texas that only want updates for Texas,
12 so the Affordable Care Act stuff would be applicable
13 because it's federal, but the California minimum wage would
14 not.

15 Q. Does Rimini also tailor its updates on the basis of
16 whether the client has vanilla or custom code in its
17 production system?

18 A. Yes, we do. In some instances, we actually have
19 environments that clients have applied customizations to,
20 and when we provide our tax and regs updates, we will build
21 our changes on top of any customizations that they may have
22 in that environment.

23 Q. Okay. And just to remind the jury, what is vanilla
24 code?

25 A. Vanilla code would be what the client received from

1 Oracle. So Oracle is going to give them the vanilla
2 product.

3 When Oracle comes out with tax and regs updates,
4 the updates are always based on the vanilla product. If
5 the client has customizations in their code, the client
6 would have to retrofit, they're going to have to take the
7 change from Oracle, and if it conflicted with the
8 customizations they had, they would need to merge that
9 together.

10 We'll do that for them if we have a copy of the
11 environment with the customizations in it.

12 Q. Okay. So, again, thinking back on this whole
13 process, how many updates does Rimini generate a year?

14 A. There's between five and six major bundles, and, as
15 I said, each one of those bundles could contain 30 to 100
16 individual updates, times hundreds of clients, so we're
17 talking about literally thousands of updates a year.

18 Q. And thinking back to 2011 timeframe, how many Rimini
19 employees were involved in the development process that we
20 see from start to finish?

21 A. I think you can see from this process it's -- it's a
22 lot of work to prepare one of these updates.

23 From beginning to end there's in excess of 50
24 employees that have their hands in preparing one of these
25 updates, from the folks that are doing the research, to the

1 folks that are doing the analysis, to the developers, to
2 the testers, to the technical writers that are writing the
3 doc, to the packaging and delivery team.

4 Q. Have you heard of Rimini's development process
5 referred to as the factory floor?

6 A. Yes, I have.

7 Q. And why is that?

8 A. In a lot of ways, this process is very much like an
9 assembly line with various individuals along the process
10 completing various tasks.

11 Q. Okay. So I'm going to switch gears a little bit and
12 talk about something called remote development. Are you
13 familiar with remote development, Mr. Benge?

14 A. Yes.

15 Q. And you understand that one of the questions in this
16 case involves whether or not Rimini Street could have
17 implemented a purely remote model to deliver its tax and
18 regulatory updates?

19 A. Yes.

20 Q. And just to remind the jury, provide your view of
21 what remote-only model is?

22 A. A remote-only model would be where we have no Oracle
23 software whatsoever installed on Rimini Street's systems.

24 So in a remote-only model, the PeopleSoft
25 software would all be client hosted. The clients would

1 have it installed on their environments. We would be
2 remotely accessing that.

3 So we use remote access technologies to get into
4 those environments, and all the work would be done within
5 those environments.

6 Q. Now, as an alternative to the model that we just
7 discussed, could Rimini have, from the beginning,
8 implemented a remote-only model?

9 A. Yes.

10 Q. Why do you say that?

11 A. Well, we had already had four years of experience in
12 working with 20 percent of our clients that were already
13 client hosted. So we had quite a bit of experience already
14 in working with these client-hosted environments.

15 Q. And, again, thinking back to 2011 and before, what
16 experience did you have as far as doing development
17 specifically for remote clients?

18 A. Again, with 20 percent of the clients remote, we
19 were doing development for those clients.

20 The process that we were going through was
21 somewhat different than it would have to be in the pure
22 remote-only model, but, nonetheless, we were working with
23 those remote clients, testing was taking place in those
24 remote environments.

25 Q. And what were those differences?

1 A. In our old remote model, we would go into the client
2 environments and retrieve the source files that we were
3 going to need to modify.

4 So if there were five or six programs we were
5 going to have to change, we would retrieve them to our
6 network so that the developers could edit them from their
7 local laptop machines, and then once they got all of their
8 changes incorporated, they would then transfer those
9 programs back to the remote environments.

10 In the remote-only model, again, everything
11 would have to be done inside that environment.

12 Q. Now, Mr. Benge, prior to 2012, was break-fix -- some
13 of Rimini's break-fix done remotely by Rimini Street
14 personnel?

15 A. Yes, it was.

16 Q. And, again, prior to 2012, was some of Rimini's
17 development work done remotely by Rimini personnel?

18 A. Yes, it was.

19 Q. And prior to 2012, was some of the quality and
20 assurance testing done remotely by Rimini personnel?

21 A. For the environments that were client hosted, all of
22 that testing was done in those client-hosted environments.

23 Q. Okay. Now, does the remote-only model require
24 additional labor?

25 A. Yes.

1 Q. And why is that?

2 A. Definitely some challenges associated with the
3 remote environments and extra effort associated with
4 working in them.

5 Q. Okay. And how much additional labor would be
6 required for development in a remote-only model?

7 A. The consensus of the team was it could potentially
8 take double. That's assuming -- that's kind of a worst
9 case scenario, assuming that we hadn't optimized for remote
10 development like we had for in-house.

11 Q. Okay. And how much additional labor would be
12 required in remote-only model for primary support
13 engineers?

14 A. For the support engineers we estimated 25 percent
15 additional.

16 Q. And why is that?

17 A. The support engineers aren't using the environments
18 as extensively as the development and testing teams.

19 The support engineers would get calls from
20 clients and occasionally need to access the environments to
21 reproduce issues and so forth.

22 But a lot of times the support engineers were
23 just able to resolve problems by just talking with the
24 client or via remote meetings.

25 Q. Okay. In the remote-only model, how much additional

1 labor would be necessary for onboarding, which would be the
2 archiving and the environment creation?

3 A. We estimated double there as well.

4 Q. And why is that?

5 A. Things are -- would be different for them. As
6 opposed to spending a lot of their time and effort in
7 setting up in-house environments, they would still have to
8 be working with clients to establish the remote
9 connectivity and make sure that the access to the remote
10 environments was functional for my team, for the
11 development team.

12 Q. Okay. Now, thinking back to 2012, did the
13 developers on your team express their views regarding
14 remote environments to you?

15 A. Yes, they did.

16 Q. Okay. Let's look at an exhibit. If we could pull
17 up, please, Plaintiffs' Exhibit 60. It should be in your
18 binders, too, Jim.

19 All right. So the jury's seen this email
20 before.

21 MR. RECKERS: If we could, Marie, pull up the
22 second email on the page. Actually, let's do the to/from
23 so we set the stage here.

24 BY MR. RECKERS:

25 Q. So, Mr. Benge, do you recognize Plaintiffs'

1 Exhibit 60 as an email that you sent Mr. Freeman in October
2 of 2009?

3 A. Yes, I do.

4 Q. And this involves the Big Lots client?

5 A. Yes.

6 Q. And that was a remote client?

7 A. It was.

8 Q. So let's go down to your email, and it's actually on
9 the screen.

10 It says, "Thanks, Ed. This is why we love
11 in-house environments," smiley face.

12 That's what you wrote to Mr. Freeman?

13 A. Yes, it was.

14 Q. Okay. So let's see what Mr. Freeman's response was.

15 We go up to the later email in the thread.

16 Mr. Freeman's response to you of the same day, he says,
17 "No, this is why it's insane and defies our business model
18 to offer to support remote environments." Smiley face.

19 Do you see that?

20 A. Yes.

21 Q. Do you agree with Mr. Freeman that in 2009 it was
22 insane and in defiance of Rimini's business model to offer
23 to support remote environments?

24 A. No, I disagree with that. There were definitely
25 challenges but not challenges we couldn't overcome.

1 MR. RECKERS: Let's pull up Plaintiffs'
2 Exhibit 50, please. I'm sorry, 51. And let's zoom in on
3 the header there.

4 BY MR. RECKERS:

5 Q. Mr. Benge, do you recognize Plaintiffs' Exhibit 51
6 as a status report from Jeff Allen?

7 A. Yes. He was a developer on the dev team.

8 Q. Who -- okay. And this is a status report from
9 February 2009; correct?

10 A. Yes.

11 Q. And would you sometimes review your developers'
12 status reports?

13 A. Yes, weekly.

14 MR. RECKERS: So, Marie, again, the jury's seen
15 this one as well. Let's go down to the Concerns window
16 which is -- yep, you got it.

17 BY MR. RECKERS:

18 Q. And so performance issues, about two-thirds of the
19 way down, three-quarters of the way down, says the building
20 a ship in a bottle, in a bottle, in a bottle problem. Do
21 you see that?

22 A. Yes.

23 Q. Do you recall what this particular problem was?

24 A. I do. I recall this is in conjunction with a
25 particular client of ours, a Canadian client, Metro

1 Vancouver.

2 Q. And what was the ship in a bottle, in a bottle, in a
3 bottle problem?

4 A. It had to do with the way we had set up remote
5 access for this particular client. We only had one that
6 was set up this way, but it was a really poor remote access
7 architecture where we were having to navigate through
8 multiple servers to finally get to their PeopleSoft
9 environment.

10 So you'd have a developer going from their
11 laptop to one of our virtual machines to the client's
12 virtual machine and then maybe their remote desktop to
13 another machine, and then finally logging in to another
14 box.

15 So it was just too many layers of access which
16 resulted in really poor performance trying to work with
17 that particular environment.

18 Q. Now, prior to 2012, did you figure out a way to
19 solve the bottle, in a bottle, in a bottle problem?

20 A. Yes.

21 Q. And what did you do?

22 A. Well, for a lot of our clients we set up secure
23 site-to-site tunnels. So this is a different remote access
24 methodology where we have a persistent secure connection
25 between our network and the client's network so that we can

1 quickly from our network connect to the server in their
2 environment.

3 MR. RECKERS: Okay. So let's move on to another
4 email -- and, Marie, don't bring it up next -- which would
5 be Plaintiffs' Exhibit 62.

6 And I'd move for admission of Plaintiffs'
7 Exhibit 62.

8 MS. DUNN: No objection.

9 THE COURT: It is admitted.

10 (Plaintiffs' Exhibit 62 received into
11 evidence.)

12 MR. RECKERS: Now, Marie, if we could zoom in on
13 the header for the middle email there. Yep, right there.
14 Yep.

15 BY MR. RECKERS:

16 Q. All right. Mr. Benge, do you recognize Exhibit 62
17 as an email that you sent Mr. Slepko in November of 2009?

18 A. Yes, that's right.

19 Q. Mr. Slepko was your immediate supervisor at the
20 time?

21 A. Yes, he was.

22 Q. Okay. So let's move down to the content of the
23 emails. Actually before that, the title here is Remote
24 Versus Internal Environments; correct?

25 A. Yes.

1 Q. Okay. So let's move down to the content of the
2 emails, and, in particular, draw your attention,
3 Mr. Bengé -- here we go.

4 You wrote to Mr. Slepko in 2009, it says, "Here
5 are some of the key challenges associated with remote
6 development."

7 Do you see that?

8 A. Yes, I do.

9 Q. And then you list about eight challenges that you
10 were aware of at the time, 2009, with remote development?

11 A. That's correct.

12 Q. Okay. So let's talk through these challenges to see
13 how they impact your views on a remote-only model.

14 The first challenge -- Marie will highlight
15 these -- relates to the starting and stopping of the client
16 environments or the client servers.

17 How, in a remote-only model, would you address
18 this particular first challenge?

19 A. This is something where I think when new clients
20 were coming onboard we would work with them more closely to
21 make sure they understand the level of access we need to
22 their environment.

23 This is a matter of making sure that the client
24 empowers us so that we can start and stop the various
25 application servers and web servers so that we're not

1 having to rely on them or call them and say, hey, we need
2 the server restarted.

3 Q. Okay. So this email is written in 2009. By the end
4 of 2011, had you been able to address this particular
5 problem for at least some clients?

6 A. Yes, we had.

7 Q. And what did you do in that regard?

8 A. As I mentioned, just working with a client to get
9 them to give us the level of access we need within that
10 development or test environment.

11 Q. The second challenge list is the coordination of
12 back up and restores. How would you address this
13 coordination issue in a remote-only model?

14 A. These aren't as time sensitive, so this might be
15 something where we could just set up a service level
16 agreement with the clients, basically something where we
17 say, hey, can we get a commitment that if we request a
18 backup or a restore of the database, that it will be taken
19 care of within 24 hours?

20 Or as an alternative, again, we could ask that
21 they provide us with that level of capability to do it
22 ourselves within the remote environment.

23 Q. And had Rimini addressed the backup and restore
24 challenge at least for some clients prior to 2012?

25 A. Yes, we had.

1 Q. Okay. So the third challenge relates to the
2 database level access. So my question is, how would you
3 address this database level access challenge in a
4 remote-only model?

5 A. This wasn't a very common problem.

6 We actually had this level of access for the
7 vast majority of our clients, but for a few we didn't, and
8 we'd periodically encounter situations like where a
9 database ran out of space, and we would have to call the
10 client and get their database administrator to add the
11 space.

12 Again, this is something I think we could work
13 with the client to make sure that we have the necessary
14 access.

15 Q. And had you in fact worked with some clients prior
16 to 2012 --

17 A. Yes.

18 Q. -- to address this challenge?

19 A. The majority of the clients already had this.

20 Q. Now, the fourth challenge we list is FTP access.
21 How would you address the FTP access challenge in a
22 remote-only model?

23 A. Again, here, this is another one, if I recall
24 correctly, only affected one client that didn't have the
25 FTP access, but just working with the client to explain why

1 we need it.

2 Sometimes it's just a matter of sitting down
3 with them and getting them to understand why we need the
4 access so that they'll give it to us.

5 With the -- FTP stands for file transfer
6 protocol. It allows us to move files. So, for example, we
7 would write our documentation on our network but need to be
8 able to transfer the documentation to the client site, for
9 example.

10 Q. And so it sounds like for the majority of your
11 clients, you had already addressed the FTP access challenge
12 prior to 2012?

13 A. Yes.

14 MS. DUNN: Objection, leading.

15 MR. RECKERS: I can rephrase.

16 THE COURT: I would just caution, Mr. Reckers,
17 to avoid the leading questions.

18 It is leading, but I'll allow the answer to
19 stand.

20 BY MR. RECKERS:

21 Q. Now, Mr. Bengé, the fifth challenge down is the
22 unique user identification challenge. Do you see that?

23 A. Yes.

24 Q. How would you address the -- this particular
25 challenge in a remote-only model?

1 A. With the remote-only model, we have to keep track of
2 a lot of login credentials for all these environments.
3 It's a lot easier for us if the clients will just set up
4 one shared login for the team to use, and some clients have
5 done that for us.

6 Others, due to their security policies, require
7 us to have named user accounts. So each and every
8 individual user has to have their own login, and in those
9 cases, we just need to put in a better way administratively
10 of keeping track of all that, and the password policies.

11 Q. Had Rimini addressed the user ID challenge for at
12 least some clients prior to 2012?

13 A. Yes, we had.

14 Q. And the sixth challenge addresses inconsistencies in
15 environments. So how would you address that challenge in a
16 remote-only model?

17 A. To the extent possible, we like to have consistency
18 in the remote environments, but that's not always going to
19 be possible. I mean, each one of these clients are setting
20 up these environments. There's going to be differences.

21 So I think we really just need a way of better
22 keeping track of the differences between clients, having a
23 repository or a document that describes the unique aspects
24 and the unique configuration and setup for each client.

25 Q. Had Rimini addressed the consistency challenge for

1 at least some clients prior to 2012?

2 A. Yes, we had.

3 Q. Okay. So the seventh challenge has to do with
4 automation. And how would you address this particular
5 challenge in a remote-only model?

6 A. Well, we had invested quite a bit of time and effort
7 in building utilities to help us work with our in-house
8 environment because that was the majority of our clients.
9 Eighty percent of our clients were in-house so we built the
10 utilities for that.

11 Moving forward, in a remote-only model, we would
12 definitely take the time and effort to build those
13 utilities to work in a distributed remote environment.

14 Q. Okay. So in your view, again, thinking back to
15 2012, or 2011, could Rimini have designed its tools to
16 operate in a remote-only model?

17 A. Yes, we could have done that.

18 Q. Okay. And so the eighth challenge that we see
19 touches on what we talked about before with the bottle in a
20 bottle issue, performance. How would you address the
21 performance issues in a remote-only model?

22 A. Well, like I mentioned with Metro Vancouver, we kind
23 of learned a little bit about one way not to set up remote
24 access.

25 You know, we did learn that there were two or

1 three other good alternatives for how we could set up the
2 remote access architecture and still get good performance
3 for accessing those environments.

4 And also with regard to performance, just
5 working closely with the clients to make sure that the
6 servers that they're setting up for us have adequate memory
7 and CPUs so that they're going to perform adequately.

8 Q. Okay. And so had Rimini addressed the performance
9 challenges for at least some clients prior to 2012?

10 MS. DUNN: Objection, leading.

11 THE COURT: Same caution. Try to avoid the
12 leading questions, Mr. Reckers.

13 BY MR. RECKERS:

14 Q. Mr. Benge, had Rimini Street addressed the
15 performance challenge for some clients prior to 2012?

16 A. Yes --

17 MS. DUNN: Objection; same question.

18 THE COURT: Sustained. But I'll allow the
19 answer to stand. Please move forward.

20 BY MR. RECKERS:

21 Q. Mr. Benge, did you consider all of the challenges
22 that we just discussed when reaching your views on the
23 remote-only model?

24 MS. DUNN: Objection, Your Honor, leading.

25 THE COURT: Sustained.

1 BY MR. RECKERS:

2 Q. Mr. Bengé, what challenges did you consider when
3 reaching your opinion regarding the remote-only model?

4 A. Definitely all of these challenges. These are the
5 key items that would have considered in terms of coming up
6 with an estimate.

7 Q. Are there other challenges that aren't on our list
8 that you considered?

9 A. No. I've had plenty of time to think about this
10 further, and this was a comprehensive list.

11 MR. WEBB: Okay. So, Marie, let's move down to
12 the last paragraph of this particular exhibit.

13 BY MR. RECKERS:

14 Q. When you say here -- and I refer you to the second
15 sentence, it says, "Keep in mind there are also some
16 advantages to remote environments." Do you see that?

17 A. Yes, I do.

18 Q. Can you explain to the jury what you meant as far as
19 the advantages to remote environments?

20 A. Well, there's a couple things. The most obvious one
21 is that if the clients are going to host these
22 environments, we no longer have to have all of the hardware
23 to post all these environments in-house.

24 So all of the servers, all of the disk space,
25 all of that stuff that we had to purchase or lease for, you

1 know, our data center would no longer be necessary because
2 the clients are hosting it, so there would be a significant
3 cost savings there.

4 But in addition, by having the clients establish
5 these environments, it's possible that those environments
6 could more closely resemble their production environments
7 which would help with support.

8 So, you know, if support was trying to answer a
9 question, rather than us having maybe an in-house vanilla
10 demo environment, we might actually have something that was
11 an environment that more closely resembled what they were
12 actually running in production, and that would help in
13 diagnosing and solving problems.

14 Q. Okay. So let's leave the topic of remote
15 environments and move on to another topic the jury has
16 heard a bit about, and that is security.

17 Mr. Benge, does Rimini tell its clients to
18 ignore security?

19 A. Absolutely not. In these types of applications
20 where you're dealing with payroll for large enterprises and
21 large financial applications, security is very important.

22 Q. And what does Rimini do to assist its clients in
23 maintaining the security of the supported applications?

24 A. I guess the first level is with our primary support
25 engineers. If clients have questions about how to set up

1 or configure the security, the support engineers are
2 knowledgeable about that and can help them with it.

3 The security setup in an application like this
4 can be pretty complex. It's a big application, a lot of
5 aspects of security.

6 So there's the support engineers, and, from time
7 to time, we've also brought in our own company security
8 team.

9 So within our own company we have, in our IT
10 organization, security professionals that have been called
11 in to help clients that had security concerns.

12 Q. And what experience do you personally have with
13 PeopleSoft's security mechanisms?

14 A. Well, I managed the security team at PeopleSoft for
15 a couple of years so I know the security functionality
16 inside and out.

17 Q. And what is holistic security?

18 A. Holistic security is looking at all of the layers of
19 security, not just the application level security, you have
20 to think about the network security, the database security,
21 encryption.

22 And not even just that, it's about the people
23 and the processes too. You can have the best security in
24 the world on your application, but if you've got a rogue
25 employee that's not being careful with it, you can have

1 problems.

2 I also like to think of holistic security --
3 think about a bank and all the layers of security they
4 have. There might potentially be someone who could pick
5 the lock on a safety deposit box, but for them to be able
6 to get in there, they're going to have to get through a lot
7 of other layers. There's the bank vault door, there's
8 security cameras, there's silent alarms, there's a lock on
9 the outside of the bank, potentially a guard.

10 So holistic security is looking at all of the
11 layers, not just looking at -- you know, in this case, not
12 just looking at the PeopleSoft application security but all
13 of the layers of security.

14 Q. Now, is holistic security something that's known in
15 the industry?

16 A. Yes, it is.

17 Q. And in preparing for your testimony, did you
18 investigate whether or not Oracle had published articles on
19 holistic security?

20 A. Yes, I did.

21 Q. And what did you find in that regard?

22 A. I just went out and did a --

23 MS. DUNN: Objection, foundation.

24 THE COURT: Sustained.

25 MR. RECKERS: Let's turn to Plaintiffs'

1 Exhibit 5455. And this has been admitted already.

2 And so, if you would, Marie, let's look at the
3 top.

4 BY MR. RECKERS:

5 Q. Mr. Benge, this is an email that was shown to the
6 jury last week from Krista Williams to someone named Linda
7 Roberts. Do you see that?

8 A. Yes, I do.

9 MR. RECKERS: My question in particular is down
10 the page, start with paragraph 8, section B. Right there,
11 Marie.

12 BY MR. RECKERS:

13 Q. And so let me ask you this. Mr. Benge, what does
14 Rimini Street tell its clients with respect to the security
15 that it could provide to the supported PeopleSoft
16 applications?

17 A. Well, in our contracts we do --

18 MS. DUNN: Objection, foundation.

19 BY MR. RECKERS:

20 Q. Mr. Benge, are you familiar with what Rimini Street
21 tells its clients with respect to the security it can
22 provide?

23 A. Yes.

24 Q. And is the -- is the content of Rimini's disclosures
25 to its clients reflected on the screen?

1 A. Yes, it --

2 MS. DUNN: Objection, Your Honor, foundation.
3 Foundation can't be established by looking at the screen.

4 MR. RECKERS: I'm sorry.

5 THE COURT: Sustained. There's still a
6 foundational weakness here. I think you need to lay some
7 greater foundation.

8 BY MR. RECKERS:

9 Q. Mr. Benge, let me just ask it this way. What does
10 Rimini tell its clients about its ability to provide fixes
11 and updates for --

12 MS. DUNN: Objection, Your Honor, same basis.

13 BY MR. RECKERS:

14 Q. Mr. Benge, are you aware of what Rimini tells its
15 clients with respect to how -- what technically it can
16 provide as far as updates for the PeopleSoft product?

17 A. Yes. Anything that's in the application layer, like
18 if a security issue --

19 MS. DUNN: Objection, Your Honor, same basis.

20 MR. RECKERS: I believe I've laid a foundation,
21 Your Honor.

22 THE COURT: I'll allow him to go forward.

23 THE WITNESS: So we can fix vulnerabilities in
24 the application layer. The source codes all provide it.
25 If something was wrong there, we could correct it.

1 However, PeopleSoft also includes a layer of
2 software called PeopleTools, which the source code is not
3 delivered for, and our license agreement with our clients
4 spells out the fact that if there are issues in that layer,
5 since we don't have the source code, we can't correct
6 problems at that level.

7 However, having said that, there are ways that
8 in many circumstances, if a problem was discovered at that
9 layer, we could still mitigate it through a work-around or
10 through addressing, like we've mentioned before, holistic
11 security.

12 If there's a problem with the lock on the safety
13 deposit box, well, let's make sure that the other layers of
14 security are fully in effect.

15 BY MR. RECKERS:

16 Q. And has Rimini had the occasion to develop patches
17 to address security vulnerabilities for PeopleSoft?

18 A. No, we really haven't. There haven't been any
19 client cases where clients had problems in this regard.
20 It's a very stable product.

21 Q. And what resources does Rimini have available to
22 address security concerns for clients?

23 A. Well, certainly, we got our support engineers, our
24 development staff, you know, people with years of
25 experience working with security that could help address

1 any security concerns.

2 Q. Now, are you aware of any of Rimini's clients for
3 PeopleSoft applications having been hacked?

4 A. No.

5 Q. Okay. Let's turn to the topic of Oracle's cross-use
6 allegations.

7 Prior to 2012, did Rimini develop updates in one
8 environment and distribute the resulting updates to
9 multiple clients?

10 A. Yes, in certain circumstances.

11 Q. In what instances?

12 A. Situations where we had multiple clients that had
13 the same exact code to begin with. So maybe two clients
14 like H&R Block and 3M Company that both left Oracle on
15 release 8.8 at the same last Oracle tax update, so the
16 before version of their code was identical.

17 So we would make our changes to one version of
18 the program and then deliver that to both clients.

19 Q. In the instances that you just described, did Rimini
20 have any policies in place to ensure that clients did not
21 receive Oracle code beyond what they already had?

22 A. Yes.

23 Q. Please describe those policies.

24 A. Well, certainly the policies were in place, but we
25 also had utilities that we would use to help us ensure that

1 the before code was the same before we started making
2 modifications to a single version and delivering it back to
3 that group of clients.

4 Q. Now, did Rimini ever obtain ISO certifications for
5 its development process?

6 A. Yes, we did.

7 Q. And why did Rimini do that?

8 A. I kind of like to almost think of it as a Good
9 Housekeeping seal of approval.

10 ISO stands for International Standards
11 Organization, and we receive a certification from an
12 independent auditor that's come in and reviews our
13 processes and makes sure that we're following well-defined
14 and well-documented process and procedure.

15 Q. Do Rimini's ISO certifications relate to Rimini's
16 treatment of Oracle copyrighted software?

17 A. Yes.

18 Q. In what regard?

19 A. Again, we've got a process that's well documented.
20 It's well defined how we do things, and the way that the
21 processes are defined respect Oracle's intellectual
22 property rights.

23 Q. Are you aware of any instances where someone on your
24 development team intentionally distributed Oracle code to
25 someone who wasn't entitled to that code?

1 A. No, I'm not.

2 Q. And are concerns like that raised from time to time?

3 A. Yes, there have been some.

4 Q. And what do you do when such concerns are raised?

5 A. First and foremost would be to investigate it, see
6 if there was an issue; if there was, to get it corrected.

7 But training is also a big concern there, you
8 know, making sure that the employees understand proper
9 process and procedure.

10 Q. Okay. If you knew that Rimini's -- that the
11 Rimini-hosted environments that you discussed infringed
12 Oracle's copyrights at the time period between 2006 to
13 2011, would you have used those environments to support
14 Rimini's clients?

15 A. No, we wouldn't have.

16 Q. And so for my follow-up question I'm still going to
17 be referring to the time period between 2006 to 2011. Do
18 you understand?

19 A. Yes.

20 Q. Okay. Would you have used, instead of the
21 Rimini-hosted environments, alternatives if you had known
22 that the Rimini-hosted environments infringed?

23 A. Yes, I believe we would have.

24 Q. Now, talking about the reuse of code that we talked
25 about for the multiple clients, if you had known that

1 Rimini's reuse of code infringed Oracle's intellectual
2 property or Oracle's copyrights, would you have used those
3 processes to support Rimini's clients?

4 A. No, we wouldn't have.

5 Q. Now, were there alternatives to code reuse that
6 Rimini could have used to support its clients in that
7 timeframe?

8 A. Yes, there were.

9 Q. If you had known that Rimini's code reuse infringed
10 Oracle's copyrights, would you have used the available
11 alternatives to provide support?

12 A. Yes.

13 Q. Now, referring to Oracle database, if you had known
14 that Rimini's use of Oracle Database infringed Oracle's
15 copyrights, would you have used that database to support
16 Rimini's clients?

17 A. No.

18 Q. Were there alternatives in that timeframe to the
19 Oracle Database that Rimini could have used to support its
20 clients?

21 A. Yes, there were.

22 Q. If you had known that Rimini's use of the Oracle
23 Database infringed Oracle's copyrights, would Rimini have
24 used those alternatives to support its clients?

25 A. Yes, I'm sure we would have.

1 Q. Mr. Benge, do you believe that Rimini's processes
2 intentionally violated Oracle's intellectual property
3 rights?

4 MS. DUNN: Objection, leading.

5 THE COURT: Overruled. I'll allow it.

6 THE WITNESS: No, I feel like the development
7 team was very committed to respecting Oracle's IP rights.

8 We were very careful to make sure that clients
9 only received updates that they were entitled to. We were
10 very careful to make sure that they didn't receive
11 something -- an update from Oracle that they didn't already
12 pay Oracle for.

13 You know, the team that we have puts a lot of
14 time and effort into building these tax, legal and
15 regulatory updates. They're a hard-working, committed
16 group of professionals, and we pride ourselves on the
17 updates that we create and the value we give our customers.

18 MR. RECKERS: No further questions at this time.

19 THE COURT: All right.

20 Cross-examination?

21 Ms. Dunn, go ahead, please.

22 MS. DUNN: Thank you, your Honor.

23 CROSS-EXAMINATION

24 BY MS. DUNN:

25 Q. Good afternoon, Mr. Benge. How are you?

1 A. Good, thank you.

2 Q. My name is Karen Dunn. I'm an attorney for Oracle,
3 and I'm going to be asking you some questions.

4 A. Okay.

5 Q. Okay. Before we begin, though, I want to make sure
6 that we understand the time period I'm asking you about
7 when I ask these questions.

8 So when I ask you about the facts of this case,
9 what I'm talking about is the time period between 2005 and
10 2011. Do you understand that?

11 A. Yes, I do.

12 Q. Okay. And you previously provided deposition
13 testimony in this case on June 21st, 2012. Do you remember
14 that?

15 A. Yes, I do.

16 Q. Okay. In March 2012 you provided an opinion to
17 Rimini's experts; right?

18 A. Yes.

19 Q. Okay. So if I ask you questions about your role in
20 the litigation, you can talk about the time period up until
21 the date of deposition, June 21st of 2012, but I'm not
22 asking you about anything after that. Do you understand?

23 A. Understood.

24 Q. Okay. All right. So you joined Rimini Street in
25 2008; right?

1 A. That's correct.

2 Q. Okay. And, in 2012, when you were deposed you were
3 the vice-president of PeopleSoft Development at Rimini
4 Street?

5 A. Yes.

6 Q. Okay. And before Rimini, I think you said on
7 direct, you worked at PeopleSoft and then at Oracle?

8 A. That's correct.

9 Q. And at PeopleSoft you didn't gain any experience
10 working with either JD Edwards or Siebel --

11 A. No.

12 Q. -- right?

13 And at Oracle you didn't gain any experience
14 working with JD Edwards and Siebel; right?

15 A. No, I did not.

16 Q. Okay. And any time up until you were deposed, you
17 still had no experience with either JD Edwards or Siebel?

18 A. That's correct.

19 Q. Okay. So as you probably know, Oracle sued Rimini
20 Street in January of 2010, and that's when the litigation
21 began.

22 Your counsel referred several times to your
23 opinion, but he didn't really explain what that meant. So
24 let's explain that.

25 You were asked by Rimini's lawyers to tell

1 Rimini's experts how many more employees Rimini Street
2 would need to operate remote-only; is that right?

3 A. Not in terms of number of employees, but I did
4 provide an estimate of double that we spoke about earlier.

5 Q. Okay. So you provided a number, how many employees
6 would be necessary hypothetically for Rimini to operate
7 remote-only?

8 A. Yes.

9 Q. And you were asked that after Oracle filed its
10 lawsuit; right?

11 A. That's correct.

12 Q. And actually you were asked this sometime after
13 Oracle filed its lawsuit. You were asked in March of 2012?

14 A. That's right.

15 Q. That's right? Okay.

16 So to be very clear, this calculation that you
17 made, that your attorney referred to as your opinion, you
18 made for the purpose of litigation, not because Rimini had
19 actually adopted a full remote-only support process,
20 between the dates of 2006 to 2011?

21 A. Right.

22 Q. Okay. And so you began to say but your number was
23 you would double the number of PeopleSoft developers, you
24 would double the number of PeopleSoft quality assurance
25 engineers, you'd double the number of remote environment

1 support staff, you would double the number of onboarding
2 employees, and you would say that there's 25 percent more
3 PSEs; right?

4 A. Yes.

5 Q. Primary support engineers.

6 All right. So the reason you were asked to
7 provide this number is so Rimini's damages expert could
8 determine a damages figure; right?

9 A. Partially.

10 Q. Were you aware that that was a reason you were
11 providing this information in March --

12 A. Yes.

13 Q. -- of 2012 when you provided it?

14 A. Yes.

15 Q. You understood at that time that the company's goal,
16 Rimini's goal, was to minimize its damages; right?

17 A. I wasn't focusing on damages, I was just providing
18 an estimate for what I was requested to provide an estimate
19 for.

20 Q. You said that you knew you were providing an
21 estimate to the damages expert; right?

22 A. Yes, I knew that.

23 Q. Right. And you knew the company's goal was to keep
24 the damages estimate low?

25 A. I suppose that may have been a goal, but I was

1 providing an estimate that I felt was one that was generous
2 and one that I felt like --

3 Q. Before we get -- we're going to talk a lot actually
4 about your calculation. I'm just trying to understand.
5 And I think that you said that you understood that this was
6 the goal.

7 A. Yes.

8 Q. Yes. Okay.

9 So when we talk about the damages expert, we're
10 talking about Mr. Hampton. The jury has not yet seen
11 Mr. Hampton, but we're going to talk about him.

12 So Mr. Hampton used what you told him to
13 determine how much money he thought Rimini would have to
14 pay in this case. Do you understand that?

15 A. Yes.

16 Q. Okay. And based on your number, that's how Rimini's
17 damages expert, Mr. Hampton, keeps his damages number under
18 \$10 million; right?

19 A. I know nothing about the actual numbers.

20 Q. Nobody told you what the damages number is that
21 you're claiming?

22 A. I've not been involved in that, no.

23 Q. Okay. Do you think Mr. Ravin knows that?

24 A. I'm sure he does.

25 Q. Okay. So you spent an hour explaining your

1 conclusions to Mr. Hampton, the damages expert; right?

2 A. Yes.

3 Q. He didn't give you any comments? He didn't give you
4 any feedback? That's fair?

5 A. We had a couple of discussions that I recall.

6 Q. Okay. But as for comments or feedback, you don't
7 recall any?

8 A. No. I remember meeting with him and going over
9 this, yes.

10 Q. And -- but just to be clear, so you answer my
11 question no comments, no feedback; right?

12 A. Not that I recall. It was quite sometime ago. That
13 was in 2012.

14 Q. That's right.

15 All right. So he gave you no comments and
16 feedback, and you gave him no documents; right?

17 A. No. We just met and discussed it.

18 Q. Okay. So you didn't give him any documents, and
19 just two weeks after that Mr. Hampton issues his report.

20 The core conclusion is based on what you told
21 him; right?

22 THE COURT REPORTER: I'm sorry. The what
23 conclusion?

24 MS. DUNN: The core conclusion.
25

1 BY MS. DUNN:

2 Q. So Mr. Hampton has concluded how much money he
3 thinks Rimini owes in this case --

4 MR. RECKERS: Objection, foundation.

5 THE COURT: Rephrase your question, please.

6 BY MS. DUNN:

7 Q. Mr. Benge, two months after your discussion,
8 Mr. Hampton released his report?

9 MR. RECKERS: Objection, foundation.

10 MS. DUNN: I'll just tell him.

11 This is -- I believe, Your Honor, this is a
12 stipulated fact.

13 THE COURT: That was my hesitance. I'll allow
14 the question.

15 BY MS. DUNN:

16 Q. Okay. So you agree, then, that two weeks later,
17 after your conversation, Mr. Hampton issued his report;
18 right?

19 A. I believe so.

20 Q. Okay. So two weeks for an expert analysis. Do you
21 think maybe he had the number before you talked to him?

22 A. I don't know.

23 Q. Do you know that he didn't?

24 A. I didn't know that, no. I'm sure that he didn't
25 only speak to me.

1 Q. Well, he placed you in the report, but his report
2 did come out mighty quickly. So it's possible he might
3 have had the number before; right?

4 MR. RECKERS: Objection, foundation.

5 THE COURT: Sustained. It calls for
6 speculation.

7 BY MS. DUNN:

8 Q. All right. Just based on your knowledge, do you
9 know that Mr. Hampton did not have the number before you
10 spoke to him?

11 A. I didn't know that for sure, no.

12 Q. Okay. And you understand that this entire
13 conversation about what Rimini would need to do to have a
14 remote-only environment is so Rimini can avoid liability in
15 this case; right?

16 A. Yes.

17 MR. RECKERS: Objection, foundation.

18 THE COURT: Overruled.

19 BY MS. DUNN:

20 Q. Could you restate your answer?

21 A. Could you restate the question?

22 Q. Yes, I can.

23 You understand that this entire conversation
24 about what Rimini would do to accomplish remote-only
25 support is so Rimini can avoid liability in this case?

1 A. It's my understanding that we were discussing
2 alternatives that would be noninfringing.

3 Q. All right. Well, your previous answer, I think, was
4 yes. Are you going to stick with yes?

5 A. Yes.

6 Q. Okay. And was that something you understood when
7 you were asked to provide your estimate?

8 A. Yes.

9 Q. Your calculation?

10 All right. Has Mr. Ravin ever told you that
11 this Court has already found that Rimini Street violated
12 PeopleSoft's -- Oracle's PeopleSoft copyrights?

13 A. I've heard that, yes.

14 Q. Did Mr. Ravin tell you or someone else?

15 A. Someone else.

16 Q. Okay. And who was that?

17 A. I'm trying to recall where I've heard it from, but I
18 definitely had heard that earlier --

19 Q. But not Mr. Ravin?

20 A. It may have been in a company communication. I
21 don't recall.

22 Q. So there could have been a communication to the
23 company that the Court had found that Oracle's copyrights
24 for PeopleSoft were violated?

25 A. I think there may have been, yes.

1 Q. Okay. Do you remember anything about that company
2 communication?

3 A. No. It would have been very high-level. Just
4 early, early decisions that had been made by the Court and
5 sharing that with the company, the status of the
6 litigation.

7 Q. Okay. And would Mr. Ravin have sent out such a
8 communication?

9 A. He had provided some updates to the company how the
10 litigation was going in quarterly company calls, so forth.

11 Q. Okay. And you can't recall whether this one was one
12 of the updates he sent?

13 A. No.

14 Q. How about this, did he tell the company that the
15 Court has already found that Rimini violated Oracle's
16 database copyrights?

17 MR. RECKERS: Your Honor, this is beyond the
18 timeframe.

19 MS. DUNN: Your Honor, counsel asked this
20 witness many questions beginning with the words "if you had
21 known that."

22 THE COURT: I don't consider this beyond the
23 scope of the timeframe that was opened by the direct
24 examination. I'll allow the question. I'm still mindful
25 of the issue however.

1 BY MS. DUNN:

2 Q. Okay. So it's fair to say that you now know that
3 the Court has found these violations --

4 A. Yes.

5 Q. -- is it fair to say?

6 A. Yes.

7 Q. And that you knew that when counsel asked you that
8 series of questions beginning "if you had known that"?

9 A. Yes.

10 Q. So now you know; right?

11 A. Yes, I do.

12 Q. Does that change your answer to any of those
13 questions?

14 A. No.

15 Q. All right. So in addition to speaking to
16 Mr. Hampton, you spoke to Mr. Hilliard, who is Rimini's
17 technical expert; right?

18 A. Yes, that's correct.

19 Q. Okay. He may be here today, I'm not sure.

20 But he also gave you no comments on your
21 remote-only model; right?

22 A. I don't recall. First discussions with him were
23 mostly focused around our current process.

24 Q. At your deposition you said he had no comments. Is
25 that -- is that what you recall today too?

1 A. Yes.

2 Q. Okay. And Rimini's lawyers attended both these
3 meetings with Mr. Hilliard and Mr. Hampton with you; right?

4 A. Yes.

5 Q. All right. So I know you wanted to talk about
6 the -- how you got to this number, so let's talk about that
7 a little bit.

8 When you calculated this number that you gave to
9 Mr. Hampton so he could calculate damages in this case, you
10 made the assumption that Rimini would keep all of its
11 customers if it went remote-only; right?

12 A. Yes.

13 Q. Yeah. And Mr. Hampton relied on that?

14 A. Okay.

15 Q. And -- but you did no analysis to determine whether
16 that was the case; right?

17 A. No. I did make an assumption, though, that clients
18 would go along with moving to a remote-only model.

19 Q. Right. But not just that clients would go along,
20 that you would retain all of the customers, that Rimini
21 could retain all of the customers in a remote-only world;
22 right?

23 A. Yes.

24 Q. Okay. And you made this assumption even though in
25 remote-only, customers would have to build the environments

1 themselves; right?

2 A. Most clients already have some that we might be able
3 to use.

4 Q. Right. But your assumption was that the customers
5 would have had to build them themselves; right?

6 A. Potentially.

7 Q. And you also -- you also made this assumption even
8 though the clients would have to use their own IT
9 resources; right?

10 A. Yes.

11 Q. Okay. And clients would have to administer their
12 own environments; right?

13 A. To some extent. I mean, we would be using those
14 environments and doing a lot of the work in those
15 environments ourselves.

16 Q. Okay. So when you were deposed in this case, you
17 were asked this question, and you said that the clients
18 would ultimately be administering the environment. Is that
19 true?

20 A. Again, to a certain extent. There's going to be
21 aspects of maintaining that environment that we can do
22 ourselves.

23 To a certain degree, it depends on how empowered
24 we are in that environment. Some of the challenges that I
25 spoke to earlier can be mitigated by them giving us

1 adequate levels of access in the remote environment.

2 Q. All right. But we're talking in a remote-only
3 world; and, actually, also in your deposition, you said
4 that you had made no assumptions about whether Rimini would
5 still be building remote environments.

6 And your assumption was that the clients would
7 build them, that they would use their own IT resources, and
8 that they would administer the environment. That was your
9 deposition testimony.

10 A. Right, at the time.

11 Q. Are you changing that today?

12 A. No, at the time we did not know.

13 Q. Right. That was -- that was what you thought.

14 A. Yes.

15 Q. Okay. You also assumed that you would keep all the
16 customers even though clients would have to do their own
17 backups?

18 A. That's right. I mean, they're used to doing
19 hundreds, if not thousands, of backups. It's something
20 that's routine for an IT department to do.

21 Q. Right. And this is the same thing that we saw
22 earlier when Mr. Ravin commented about when TomorrowNow
23 changed to remote only, and he said,

24 "Every client will now be responsible for
25 setting up their own environments for use by TomorrowNow,

1 and they would have to procure all their own hardware and
2 software at their own expense."

3 Do you agree with that?

4 A. I'm not familiar with -- intimately familiar with
5 that, but, yes.

6 Q. That's what Mr. Ravin said. Would you agree with
7 it?

8 A. Yes, in a client-hosted model, the client's going to
9 be responsible for that. It's going to be running on their
10 hardware.

11 Q. That's right.

12 So you assume that Rimini Street would retain
13 all its customers even though customers would have to build
14 their own environments, they would have to administer the
15 environments, Rimini Street may not be building any
16 environments, and they'd have to create their own backups.
17 Is that right?

18 A. Yes.

19 Q. Okay. And you made this assumption without
20 consulting a single customer; right?

21 A. Well, I work day in and day out with hundreds of
22 customers. I know the customers well.

23 Q. When you made this decision and this number, which
24 is important to the damages number in this case --

25 A. Yes.

1 Q. -- you didn't talk to a single customer; right?

2 A. I have conversations with customers weekly and --

3 Q. Did you ask a single customer about this?

4 A. Specifically no.

5 Q. Okay. And when you reviewed the depositions as part
6 of this case, do you -- do you remember seeing a deposition
7 from a representative of Carl Karcher, who is a Rimini
8 Street customer? This is the restaurant chain responsible
9 for Carl's Jr., and Hardee's?

10 A. I'm familiar with the client. I don't know what
11 document you're referring to.

12 Q. Okay. I'm referring to the deposition. So this is
13 a Rimini customer. And what he said was that --

14 MR. RECKERS: Objection, foundation, Your Honor.

15 THE COURT: Overruled.

16 BY MS. DUNN:

17 Q. So this Rimini Street customer who was deposed in
18 this case, so we know what they think, said if all Rimini
19 would do was have support on the customer system, then they
20 wouldn't have allowed it.

21 So you don't know as you sit here today, because
22 you didn't talk to a single customer about this, how many
23 customers share this view that they never would have
24 allowed, they never would have hired Rimini Street if
25 remote-only was the option; right?

1 A. I feel like I had a pretty good feel for the fact
2 that clients would go along with remote-only development.

3 Q. You just felt it?

4 A. Yeah, from knowing them and speaking with clients,
5 yes.

6 Q. So no survey --

7 A. Some clients -- some clients actually wanted to go
8 that direction, and we steered them towards in-house.

9 Q. Yeah, that's something that we will discuss. I
10 agree with that. You did steer them towards in-house.

11 But I'm talking about -- and this is why I set
12 out the time period for you, Mr. Bengé, because it's very
13 important that we're clear about this.

14 A. Yes.

15 Q. When you formulated this number based on the
16 assumption that all your customers would stick with Rimini
17 Street and remote-only, you did not talk to a single
18 customer, you did not do a customer survey, you did not go
19 customer by customer; right?

20 A. That's correct.

21 Q. Okay. So let's talk about your calculation then and
22 what led to this under \$10 million conclusion by
23 Mr. Hampton.

24 You didn't produce any calculations that anyone
25 could check, did you?

1 A. No. This wasn't a scientific calculation.

2 Q. Right. It wasn't a scientific calculation.

3 A. No, it wasn't.

4 Q. So there was no calculations and nothing written
5 down; right? So there's nothing written down that anyone
6 could look at?

7 A. It was based on four years of experience and working
8 with 20 percent of our clients that were remote.

9 Q. Right. I understand that. But it's based on your
10 experience which we'll talk about. I just want to know
11 whether there were any calculations written down?

12 A. No, there was no formula for this.

13 Q. Okay. No study of hours; right?

14 A. No.

15 Q. You know what a margin of error is?

16 A. Yes.

17 Q. Okay. You know that it's a statistical calculation;
18 right?

19 A. Yes.

20 Q. Okay. And it requires that you do math to find a
21 margin of error?

22 A. Yes.

23 Q. All right. So in your deposition you said in
24 addition to your feel, you added a margin of error; right?

25 A. Uh-huh.

1 Q. But you didn't do any statistical calculations?

2 A. No. That's correct.

3 Q. In fact, you said a margin of error is not even a
4 hard and fast number, you just came up with it based on
5 what you saw?

6 A. Again, I felt like I came up with an estimate that
7 was for the worst case scenario, assuming that we were
8 going to have to support these remote-only clients without
9 the use of a lot of utilities that we had developed and so
10 forth.

11 Q. Well, I agree with you that Rimini Street did think
12 it was a worst case scenario. I think that that was well
13 put. But this number was based on your feelings; right?

14 A. Not just feelings. It's based on my experience.

15 Q. Right. But even by the time of your deposition in
16 2012, your experience was actually quite limited with
17 remote environments. You said that --

18 A. 20 percent of our clients were remote so --

19 Q. And you said that even at the time of your
20 deposition, which was in 2012 --

21 A. Yes.

22 Q. -- your counsel asked you a lot about 2012, you
23 said, "Our remotes are such a small percentage of our
24 client base." Right?

25 A. 20 percent. So we hadn't invested in utilities

1 because it was the minority. It was just 20 percent. But,
2 still, 20 percent is a large enough percentage that we were
3 able to gain experience with those clients.

4 Q. Well, you used to describe it as a small percentage.

5 A. 20 percent --

6 Q. You're going to stand by your deposition testimony
7 today --

8 A. The numbers are what they are. 80 percent were
9 in-house, 20 percent were remote. Whether you want to call
10 20 percent a small percent, it's certainly the minority.

11 Q. I'd like to also return to one issue of timing.

12 So as we discussed, this litigation began in
13 January of 2010, and you were asked to give this number
14 about the additional employees in 2012.

15 So we've already talked about there's no
16 calculations, there's nothing written down, you didn't
17 account for any of these problems that customers might have
18 had in the additional burden for them.

19 Sir, this number didn't really come from you,
20 did it?

21 A. Yes, it did come from me, and it was based on a very
22 thorough understanding of all of the challenges that we've
23 talked about with the remote environments.

24 Q. Sir, this number came from Mr. Ravin; right?

25 A. No.

1 Q. He provided this number a year earlier in his
2 deposition in November of 2011?

3 A. Not that I'm aware of.

4 Q. You didn't know that?

5 A. No.

6 Q. So this is a coincidence?

7 A. The fact that the remote environments took double
8 the effort has been something that we've known about for a
9 long time.

10 If you were to go ask the QA engineers when
11 they're doing testing, you know, they would be able to test
12 for an in-house client in one day.

13 If they had to test for a remote client, they'd
14 always plan for two days.

15 Q. Mr. Bengé, you have already testified that this
16 number was based on your feel and your experience.

17 And now I'm telling you that Mr. Ravin came up
18 with this number a year before you did. And you want this
19 jury to believe that your number, two weeks before the
20 expert report came out, has nothing to do with his number?

21 A. Yes, I do.

22 Q. All right.

23 A. As I said, the fact that --

24 THE COURT: I'm sorry to interrupt, but you're
25 going well beyond a response to the question in your

1 answers, and I need to caution you. Listen to the
2 question, just answer the question.

3 THE WITNESS: Yes, Your Honor.

4 BY MS. DUNN:

5 Q. Mr. Benge, are you aware that last week Mr. Ravin
6 referred to this as his estimate?

7 A. I have not been involved in any of the court
8 proceedings.

9 Q. Nobody told you that?

10 A. No.

11 Q. Mr. Ravin came up with this number a year before you
12 claimed to come up with it because he knew it was necessary
13 to keep the damages number down; right?

14 MR. RECKERS: Objection, foundation.

15 THE COURT: Sustained.

16 BY MS. DUNN:

17 Q. Mr. Benge, this is a made-up number. It's not based
18 on anything; right?

19 A. That's not true. I disagree.

20 Q. Possibly it's based on Mr. Ravin's deposition
21 testimony and his desire to keep the damages numbers down
22 in this case?

23 MR. RECKERS: Objection, foundation.

24 THE COURT: Overruled.

25 THE WITNESS: Respectfully, I disagree.

1 BY MS. DUNN:

2 Q. Can you rule it out?

3 A. I did not have discussions with Mr. Ravin about the
4 level of effort required for remote-only development, but I
5 did have a lot of discussions about it with --

6 Q. So --

7 A. -- our development manager.

8 Q. So you wouldn't know either way?

9 A. No.

10 Q. Okay. So we talked a little bit about how
11 remote-only environments were a small percentage even by
12 the time of your deposition in 2012.

13 You're aware, right, that even the small number
14 of remote environments that Rimini Street did weren't
15 entirely remote? You know that; right?

16 A. Yes, I do. I discussed that in my direct.

17 Q. So cross-use of fixes and updates means that you
18 couldn't be fully remote because the updates are created at
19 Rimini Street and then delivered to multiple customers?

20 A. Yes, I agree.

21 Q. We agree on that?

22 Okay. So do you know that when he testified
23 last week, Mr. Ravin admitted for the first time in this
24 case that Rimini took an update and used the update for
25 other clients all the time?

1 A. Again, I haven't been involved in any of the court
2 proceedings, so I'm not aware of anything that's transpired
3 in court.

4 Q. Okay. Nobody told you that he said that Rimini did
5 this all the time?

6 A. No.

7 Q. You would know this, though, because of your
8 development background. So with remote-only support, if
9 you don't have cross-use fixes all the time, you have to
10 develop updates for each individual customer from scratch;
11 right?

12 So if you're going to remote-only, you're going
13 from cross-use of fixes and updates all the time to
14 building each environment from scratch?

15 A. Yes.

16 Q. Okay. That's an enormous change, isn't it, moving
17 from cross-use all the time to building environments and
18 updates individually from scratch?

19 A. It is, which is why we estimated that it would take
20 double the amount of resources to do it.

21 Q. You didn't account for that in your number,
22 Mr. Bengé?

23 A. Oh, absolutely we did. I was absolutely counting on
24 the fact that we would have to do all the work within the
25 remote environments, that we wouldn't have access to

1 anything on the RSI or the Rimini Street network.

2 Q. But that's not something you had been doing; right?

3 A. But I understood what it would take to do it.

4 Q. Based on your feelings?

5 A. No, based on my experience and working with remote
6 environments.

7 Q. Right. Experience --

8 A. There had been some circumstances where we would go
9 directly into remote environments and change code directly
10 there.

11 Q. Right. But you just testified that this is not
12 something that you did, that even remote environments were
13 not even entirely remote; right?

14 A. That's true.

15 Q. Okay. So you didn't have experience with that?

16 A. Minimal; yes, we did.

17 Q. All right. Part of your calculation we discussed
18 before was also doubling the number of employees in the
19 onboarding team?

20 A. Yeah.

21 Q. Right? So the onboarding team deals with archives.

22 You didn't make any assumptions about whether
23 the onboarding team would still be building archives for
24 customers, did you?

25 A. I figured that they would continue to do that. I

1 didn't see any reason why they would stop doing that. It
2 would just have to be done from the client's environment
3 rather than from our network.

4 Q. Okay. So again here in your deposition testimony,
5 you said you didn't make any assumptions about the
6 onboarding team. So are you changing your testimony today?

7 A. No.

8 Q. You didn't make any assumption about the onboarding
9 team; right?

10 A. I assumed that they would continue to do what they
11 had been doing.

12 Q. That's an assumption. In your deposition you said
13 you didn't make any of those.

14 A. Okay.

15 Q. Did you make any assumptions?

16 A. Okay.

17 Q. Well, did you?

18 A. Again, I didn't think that they would be changing
19 anything other than they would be working in remote-only
20 environments.

21 If you call that an assumption, then, yes, I
22 guess I did make an assumption.

23 Q. Well, then I'm really confused, because you think
24 that they need to be doubled, but you didn't think anything
25 would change.

1 A. Well, obviously things would change. We're going to
2 a remote-only model. They're no longer going to be
3 building in-house environments. Obviously, their roles are
4 changing.

5 Q. All right. First you said you didn't make any
6 assumptions, then you said, actually, you assume they would
7 keep doing the same thing, and now you're saying, well, I
8 assume that we would need to double them because they would
9 be doing different things.

10 Mr. Benge, this is very confusing to the jury.

11 A. By doing the same thing, what I meant is they would
12 continue to do archives, but they would have to do them in
13 a different way. They would no longer be doing it on the
14 in-house environment, they would have to be creating the
15 archives from the client-hosted system.

16 Q. But you've also said that you don't know how Rimini
17 Street would create an archive in a remote-only model;
18 right?

19 A. Again, it's getting a little out of my area of
20 expertise as well. As VP of PeopleSoft Development, what
21 my team does is we prepare the tax and regs updates. We
22 work on the environments once they're created.

23 Q. Mr. Benge, this is not my question.

24 My question is that you previously said you
25 don't know how Rimini would create an archive in a

1 remote-only model. That was the area of the onboarding
2 team, not you; right?

3 A. That's correct.

4 Q. Right. But in giving this number to Mr. Hampton and
5 in formulating it, you didn't even ever talk to the
6 onboarding team; right?

7 A. I certainly would have talked to environments and
8 onboarding, yes.

9 Q. You talked to them about this number. You talked to
10 them about this.

11 This is the same question I asked you when I
12 asked if you spoke to a single customer, and you tried not
13 to answer that question. This is the same question.

14 A. It's difficult to answer in that these are teams that
15 I interact with daily so --

16 Q. Did you talk to them about this?

17 When you formulated this number that you gave to
18 Mr. Hampton that the damages number that he came up with
19 hinges on, did you talk to the onboarding team when you
20 decided they should be doubled?

21 A. I'm sure I had some discussion with them about it,
22 yes.

23 MS. DUNN: Your Honor, I'd like permission to
24 play Mr. Bengé's deposition at page 80, line 11, to page
25 80, line 16.

1 THE COURT: All right. You may do so.

2 (The videotaped deposition was played as
3 follows:)

4 "QUESTION: Did you talk to the
5 on-boarding team about how they would create
6 archives when you were performing this
7 analysis?

8 "ANSWER: No, but I don't see how it
9 would be very different, other than the
10 location where it was being performed from
11 would be different."

12 (End video.)

13 BY MS. DUNN:

14 Q. Mr. Bengé, in your deposition, this was a very easy
15 question for you to answer. You said, "No."

16 A. And I think my answer today was very similar in that
17 it would just be different where they created the archive
18 from, whether it would, you know, be done from our network
19 or from the client.

20 But with regard to discussion with the other
21 teams, you're right. You know, that was how many years
22 ago? That was in 2012.

23 Q. Well, we're happy to help remind you, but the fact
24 is you didn't talk to a single customer, you didn't talk to
25 the onboarding team; right?

1 A. That's what I said in the deposition, yes.

2 Q. Well, is that true, or is it what you said in your
3 deposition which was under oath, Mr. Bengé?

4 A. Like I said, I have conversations with these teams
5 on a daily basis. But what I have said in my deposition
6 was I hadn't spoken with them about this, and that would
7 have been more recent in my mind.

8 Q. I'm not asking you what you said in your deposition,
9 Mr. Bengé. I'm asking you what the answer is. And this is
10 a yes-or-no question.

11 So in your deposition you answered it no. Are
12 you changing that answer today?

13 A. No, I'm not.

14 MS. DUNN: Thank you.

15 THE COURT: Ms. Dunn, this would be probably a
16 good time to take our first afternoon recess.

17 Ladies and gentlemen, we'll take a 15- to
18 20-minute recess depending on when you're ready.

19 I remind you about all the cautions that I've
20 gone through so many times with you; please not to discuss
21 the case with anyone or allow it to be discussed in the
22 your presence; please keep an open mind until you've heard
23 all the evidence.

24 And we'll take our break at this time. You may
25 go ahead and step down. Thank you.

1 (Recess from 2:49 p.m. until 3:10 p.m.)

2 (Jurors enter courtroom at 3:10 p.m.)

3 COURTROOM ADMINISTRATOR: Court is again in
4 session.

5 THE COURT: Please have a seat.

6 The record will show that we're reconvened
7 following the break. We're in open court. Jury is all
8 present. Counsel and parties are present.

9 Mr. Benge continues in cross-examination by
10 Ms. Dunn, and you're welcome to go forward, Ms. Dunn.

11 MS. DUNN: Thank you, Your Honor.

12 BY MS. DUNN:

13 Q. Mr. Benge, so before we took a break, we were
14 talking about how, when you came up with your number for
15 Mr. Hampton, you had not taken into account that customers
16 had to do a lot of work and may not want to do the work for
17 the remote environments.

18 You hadn't discussed your number with the
19 onboarding team when you concluded that their numbers
20 needed to be doubled.

21 So I'm going to now ask you whether you made any
22 assumptions about how Rimini's pricing would need to change
23 after you doubled the employees.

24 A. No. I was not involved in that at all.

25 Q. So if the experts, Mr. Hilliard or Mr. Hampton, made

1 any assumptions, those didn't come from you about Rimini's
2 pricing; right?

3 A. Right.

4 Q. Okay. So the jury has heard a lot in this trial
5 about how Rimini Street offers a replacement for
6 vendor-level support at 50 percent off.

7 Wouldn't the pricing have an effect on whether
8 you could attract and retain customers?

9 A. I'm sure it would.

10 Q. You're sure it would.

11 But you decided that all customers would be
12 retained, but you didn't make any assumptions about the
13 pricing?

14 A. No. In some regards, I suppose there could be some
15 savings to us in terms of --

16 Q. I'm not asking what you suppose today.

17 A. Sure.

18 Q. Okay? I'm asking you what you were assuming when
19 you gave this number to the damages expert, and you just
20 testified that you made no assumptions about what would
21 happen to Rimini's pricing, which obviously, and we know
22 from this trial, has an impact on attracting customers.

23 So you didn't make any assumptions about how it
24 would affect the pricing, and yet you decided all customers
25 would be retained; right?

1 A. Yes.

2 Q. Never looked into it?

3 A. I'm in development. Pricing would not be my realm.

4 Q. That's right.

5 Okay. So you didn't even account for whether it
6 would have been possible to double the employees; right?

7 A. I was just looking at what it would take for
8 development. I wasn't looking into whether or not we would
9 be able to afford that, if you will.

10 Q. So the question I asked you is a little different.

11 I asked you -- I said you didn't even account
12 for whether it would have been possible for Rimini Street
13 to double these employees; right?

14 A. No, I think it would have been.

15 Q. That's not what I'm asking you, Mr. Benge. I am
16 asking whether you accounted for whether it would be
17 possible to double the employees.

18 A. I accounted if it would be doubled?

19 Q. That's --

20 A. I don't think we would have had a problem doubling
21 the number of employees.

22 Q. Let me put this a different way.

23 A. Okay.

24 Q. As it was, at times at Rimini Street you all had a
25 difficult time getting enough people to support the work

1 that you were doing; right?

2 A. Finding good people, finding good talent is always a
3 challenge, but always doable.

4 Q. Well, let's see about that, okay?

5 So, in 2008, Rimini Street experienced a growth
6 spurt when it took on clients from TomorrowNow; right?

7 A. Yes.

8 Q. That was when TomorrowNow was shut down; right?

9 A. Yes.

10 Q. And, in 2009, Rimini Street continued to be
11 understaffed. You would agree with that; right?

12 A. We were always looking for good people. We were
13 growing quickly.

14 MS. DUNN: Okay. Let's look, if we could, Matt,
15 at Plaintiffs' Exhibit 605.

16 BY MS. DUNN:

17 Q. So, Mr. Benge, this is an email from you to Brian
18 Slepko.

19 A. Yes.

20 Q. Right?

21 And it says -- let's just go to the part of this
22 email where it says, quote, "We need more staff."

23 A. Ed was talking about within his own team he needed
24 more staff, yes.

25 Q. Well, Ed is not in that email -- or that's not what

1 he's saying. You're quoting Ed as saying, "We need more
2 staff." Right?

3 A. I'm rereading this.

4 Yes, this was Ed Freeman's quote. I was quoting
5 what he had said.

6 Q. Okay. And what was Ed Freeman's team?

7 A. He was in environments.

8 Q. Right. So is that part of the staff that you would
9 double?

10 A. Yes.

11 Q. Right. And he's saying already "we need more
12 staff."

13 A. Yeah. That was his opinion, yep.

14 Q. Right. And I think it's also interesting to note
15 that he is saying that,

16 "Seeing that we've got a security team the same
17 size as the PS environment team made me laugh/cry."

18 A. Yeah, I think he was a little jealous that we had
19 hired a few folks in the security team, and he felt like he
20 needed the resources within his team.

21 Q. Right. And he didn't have those resources. He
22 said, "We need more staff."

23 A. That was his opinion, yeah.

24 Q. Does that help remind you whether there were parts
25 of Rimini Street that were understaffed in 2009?

1 A. As I said, we're always looking for good people, and
2 we also looked at other potential sources of finding --

3 Q. Mr. Bengé, I'm just asking you whether, in 2009,
4 there were parts of Rimini Street, for example, what we've
5 just discussed, development, where they were understaffed?

6 A. Yes.

7 Q. Yes.

8 Okay. Let's look also at Plaintiffs'
9 Exhibit 5356. This is an instant message exchange with
10 someone named Tim Conley. Do you know who Tim Conley is?

11 A. Yes, he's a developer on the PeopleSoft team.

12 Q. Okay. So he's also in development in PeopleSoft?

13 A. Yes.

14 Q. Okay. Here he says -- Tim Conley is talking to
15 somebody unknown, and as you read this email, if you know
16 who unknown is, please let me know.

17 But Tim Conley says to unknown, "Tell your
18 manager you feel the caseload is too great for one person."

19 A. This was definitely a conversation with a primary
20 support engineer. I believe it was John Eberhart.

21 Q. John --

22 A. Eberhart.

23 Q. Eberhart?

24 A. Yes.

25 Q. And he's a primary support engineer?

1 A. Yes, he was.

2 Q. So the primary support engineers, just to remind the
3 jury, Mr. Benge suggested doubling a number of employees.
4 With primary support engineers he says 25 percent more
5 would be the additional number needed in a remote-only
6 environment; right?

7 A. Yes.

8 Q. Okay. So he says,

9 "It just feels like I'm in a no-win situation,
10 down to 12 clients. Everyone else has between 14 and 16.
11 I'm getting somewhat concerned."

12 And Tim says, "Sure. You should be. Tell
13 someone. Blow the whistle. They can't keep this hidden
14 any longer."

15 It sounds like the PSEs were also understaffed.
16 Would you agree with that?

17 MR. RECKERS: Objection, foundation.

18 MS. DUNN: Your Honor, the witness was able to
19 even identify who unknown is in this email.

20 THE COURT: Overruled.

21 THE WITNESS: So this particular PSE had a
22 client, JB Hunt, that was particularly needy, it was taking
23 a lot of that particular PSE's time.

24 BY MS. DUNN:

25 Q. Right. But he even, from this email you can tell,

1 has fewer clients than everyone else?

2 A. Yes. And that's what he was concerned about. There
3 was a client that he was disappointed he didn't get because
4 it was a client he used to work for.

5 Q. Did he end up blowing the whistle?

6 A. I'm sure he -- I don't know for sure, but I'm
7 assuming that he would have spoken to Travis who managed
8 the support team.

9 Q. Okay. Were you aware that sometimes your colleagues
10 had to conceal from clients that Rimini was short staffed?

11 A. Well, there's always situations within companies
12 where resources are thin, and obviously you're not going to
13 make that obvious to your clients. You're going to do your
14 best to satisfy their needs.

15 Q. So is your answer, yes, you were aware that
16 sometimes your colleagues concealed from clients that
17 Rimini was understaffed?

18 A. That resources were tight?

19 Q. Mr. Bengé --

20 A. Yes, yes.

21 Q. Okay. So your testimony is yes, you were aware that
22 sometimes your colleagues concealed from clients that they
23 were understaffed?

24 A. Yes.

25 Q. All right. Let's look at Plaintiffs' Exhibit 1599.

1 This is an email from Seth Ravin to Beth Lester,
2 George Lester, and Dennis Chiu from July 18th of 2008.

3 Mr. Ravin says --

4 MS. DUNN: If we could see part of the body of
5 this email.

6 BY MS. DUNN:

7 Q. Mr. Ravin says, "We have developed a resource
8 allocation challenge with technical PS resources."

9 That's at the top, top line.

10 So "technical PS resources," I presume, stands
11 for technical PeopleSoft resources?

12 A. Yes, PS is definitely PeopleSoft.

13 Q. And these are some of the resources that you would
14 have suggested doubling, you suggested needed to be doubled
15 when you spoke to Mr. Hampton; right?

16 A. Yes.

17 Q. Okay. Mr. Ravin, it appears from this email, did
18 not think that hiring more people was the answer. In fact,
19 he says,

20 "Hiring is always the easy answer, but we have
21 to limit headcount to get scale and profitability."

22 Do you see where he says that?

23 A. Yes.

24 Q. And during this time period, it was also very
25 difficult to find employees with enough experience; right?

1 A. Like I said, it's always a challenge to find good
2 people, but they're out there.

3 Q. You said, I think, on direct that 50 people might
4 have their hands on an update?

5 A. Yes.

6 Q. And you also said on direct that for primary support
7 engineers, that they have to have 10 plus years of
8 experience, at least 10; right?

9 A. Generally, yes, we're looking for very experienced
10 individuals.

11 Q. And you said on direct that they had to be seasoned
12 and experienced?

13 A. Correct.

14 Q. And we've heard that before in this trial.

15 So we've also heard that one of the reasons that
16 you want to have experienced people so you avoid taking the
17 time to train them; right?

18 A. It definitely lessens the ramp-up time. I mean,
19 learning a product as expansive as this can take years.

20 Q. Right. So that's very difficult. You need people
21 with 10 plus years of experience, 50 plus people might have
22 their hands on any one update.

23 Did you account for this when you came up with
24 your number that these employees would need to be doubled?
25 Did you account for the difficulty in finding staff?

1 A. I assumed that we would be able to find them.

2 Q. You assumed you would be able to find them?

3 A. Yes.

4 Q. Even though Rimini Street, in 2009, not in a
5 remote-only world, in fact doing very little remote-only
6 work, was overstretched, understaffed, to the extent it was
7 misrepresenting to customers that it didn't have enough
8 staff to do the work? That's what you're saying?

9 A. Yes. I think you're misrepresenting a little bit
10 what we would say to clients.

11 Q. Well, you agreed with me --

12 A. But, certainly, you know, situations where we're
13 stretched, and you wouldn't necessarily make that obvious
14 to a client.

15 Q. Okay. Let's look at PTX 33.

16 So this is an email from Dennis Chiu, he's the
17 vice-president of support services, high up in the company,
18 to Michael Davichick and Seth Ravin, cc to Brian Slepko.

19 If we look at the body of the email, he's
20 talking about his discussions with a prospective customer,
21 somebody that they're trying to get onboard.

22 And he says -- Dennis Chiu says to Seth Ravin
23 and others,

24 "The other topic of importance was our bench
25 strength. She," the client, potential client, "asked me

1 how many other people would be part of their support team,
2 leading me to tap-dance by telling her how important it was
3 to have Barb as the primary."

4 "She might have sensed I hedged at any firm
5 numbers."

6 "I told her that I understood and we'd make sure
7 they had all the help they'd needed from us since this was
8 the million dollar question that I didn't have an answer
9 to."

10 Mr. Benge, hopefully that clarifies for you the
11 situation.

12 A. This was in relation to JD Edwards, it looks like,
13 not the product line that I work in, but, yes.

14 Q. Well, the question that I had asked you was
15 whether -- and you agreed, was whether sometimes your
16 colleagues had to misrepresent to clients, obscure for them
17 that you didn't have enough people to do the work.

18 A. Okay.

19 Q. Okay? What does okay mean?

20 A. Yes.

21 Q. Does that mean yes? Okay.

22 And so when you came up with your number for
23 remote-only support that you gave to Mr. Hampton that he
24 used and relied upon for his damages number, you didn't
25 account for the fact that even when Rimini Street was not

1 doing remote-only, was doing something easier and more
2 efficient than remote-only, they couldn't find enough staff
3 always to do the work? You didn't account for that?

4 A. We had adequate staff to get our updates out on time
5 and on schedule; never missed a delivery date.

6 Q. Mr. Bengé, we just saw three exhibits demonstrating
7 that Rimini Street was understaffed, and you agreed with
8 that.

9 A. Were there times when I put in 12-hour days? Yes,
10 absolutely.

11 Were we stretched? Yes.

12 Did we work hard to make our deadlines and get
13 things done? Yes, we did.

14 Q. That's right. You were stretched, and doubling the
15 number of all of those employees, particularly because you
16 would have needed to find people with 10 plus years of
17 experience so you would not have to train them, would have
18 been very difficult. Is that fair to say?

19 A. Difficult but certainly not impossible.

20 Q. You never looked at that question, Mr. Bengé. You
21 would not know if it was impossible or possible; right?

22 A. I felt like we could hire the resources we needed.

23 Q. You felt like that?

24 A. Yes.

25 Q. Your feelings?

1 A. Yes.

2 Q. You felt like that again; right? You never
3 investigated this? You never looked into it?

4 A. The resources are out there. There's plenty of
5 agencies that would help us find them if we needed them.

6 Q. You never looked into it? You never investigated
7 it; right?

8 A. Correct.

9 Q. Thank you. Okay. Speaking of agencies that helped
10 you, let's talk about this.

11 So you told Mr. Hampton, the damages expert, and
12 Mr. Hilliard, the technical expert, that Rimini Street
13 likely would go offshore to find additional people rather
14 than hire people in the United States; is that correct?

15 A. Yes.

16 Q. And the experts depended on this for their
17 conclusions. Are you aware of that?

18 A. Yes, I am.

19 Q. Okay. So they depended on you for your
20 representation that this labor, this pretty extreme
21 enhancement of labor, would be found offshore?

22 A. Yes.

23 Q. Okay. So let's look at Plaintiffs' Exhibit 645.

24 COURTROOM ADMINISTRATOR: This one's not in
25 evidence.

1 (Discussion held off the record.)

2 MR. RECKERS: No objection.

3 THE COURT: It's admitted.

4 (Plaintiffs' Exhibit 645 received into
5 evidence.)

6 MS. DUNN: Thank you, Your Honor.

7 BY MS. DUNN:

8 Q. All right. So let's look up at the top.

9 So this is an email from what looks like
10 April 8th of 2008 from Dennis Chiu, again, Dennis Chiu is
11 the vice-president of support services, to Thomas Shay, who
12 is one of the founders of Rimini Street, high up in the
13 company, cc Brian Slepko and George Lester, and the subject
14 is Prashant and Krishnakanth of Second Foundation.

15 And so my understanding is that Second
16 Foundation was an agency that helped Rimini Street find
17 people to work for Rimini Street in India. Am I right
18 about that?

19 A. This email is from before when I started, but I am
20 aware of Second Foundation, and we did have people from
21 Second Foundation that worked for us, yes.

22 Q. So I want to make sure when we talk about this we
23 all know what we're talking about when it says Second
24 Foundation.

25 All right. So if we could blow up this email.

1 This email is talking about one specific
2 employee who is working for Rimini Street in India, and the
3 employees name is Krishna, and it's talking about what
4 Rimini Street is going to pay Krishna.

5 And it says,

6 "The original rate of \$26 an hour was based on
7 our original contract from June 2007. Since then, the
8 competitive IT market in the offshore workforce has driven
9 wages up considerably such that candidates with even less
10 experience than Krishna's are commanding upwards of 29 to
11 \$32 an hour."

12 Mr. Bengel, when you told Mr. Hampton and
13 Mr. Hilliard that the additional employees would come from
14 India, were you accounting for the competitive IT market in
15 India?

16 A. I wasn't thinking about salaries or wages at all. I
17 was just -- I knew that we would utilize offshore resources
18 to the extent that we could.

19 The cost is obviously less, and we had been
20 having good experience with finding qualified candidates
21 there to help us.

22 Q. So is the answer to my question, no, you did not
23 account for the competitive IT market?

24 A. No.

25 Q. All right. So let's keep going.

1 "That's also led to larger gaps in qualified
2 candidates for this role, as well as retention of these
3 candidates, as we had seen with some prior candidates."

4 Did you account for the gaps in qualified
5 candidates?

6 A. We haven't had an issue with finding qualified
7 candidates in Rimini Labs or offshore.

8 Q. Mr. Bengé, again, here, I'm just asking you whether
9 you accounted for this.

10 Did you account for it? When you told
11 Mr. Hilliard and Mr. Hampton that the labor would come from
12 India, did you account for gaps in finding qualified
13 candidates, for how hard it would be to find qualified
14 candidates?

15 A. No, I assumed we'd be able to get the candidates.

16 Q. Okay. Thank you.

17 A. We would find qualified candidates.

18 Q. Okay. So then -- let's go to the paragraph that
19 says, "The concern I have."

20 "The concern I have is that if we make an
21 increase to the minimum market rate for offshore IT talent,
22 Krishna will not remain in his contract with us, leaving us
23 to seek other replacements, that will not be any cheaper or
24 will not be able to contribute to the same level of
25 performance due to their lack of experience that Krishna

1 already demonstrates."

2 Mr. Benge, this email is about one offshore
3 employee and how hard it would be to retain him and afford
4 others. Do you agree with that?

5 A. Yes.

6 Q. So when you're talking about doubling PeopleSoft
7 developers, doubling quality assurance engineers, doubling
8 remote environment support staff, doubling the onboarding
9 staff, that's way more than just one person; right?

10 A. Yes.

11 Q. Okay. But you didn't account for how competitive
12 the market was, you didn't account for the increased demand
13 in the market, you didn't account for the lack of qualified
14 candidates or the increase in their wages; right?

15 A. I'm confident we could have found the resources, but
16 I didn't account for it.

17 Q. You didn't account for that because this was based
18 again on your supposition, on your feeling; right?

19 A. And experience and doing hires, yes.

20 Q. Well, it turns out that Rimini Street's experience
21 is very different. They were having a hard time retaining
22 and paying one individual.

23 A. This was for a contract or another move we made
24 was -- this was before we had an actual operation in India
25 and were able to actually hire our own employees there.

1 Q. Mr. Bengé, the truth is, you don't have the
2 experience to have made this judgment. That's the truth.
3 That's why you won't answer my question; right?

4 A. I disagree with that.

5 Q. Then answer my question. Did you account for these
6 things?

7 A. Based on my experience, I felt like we could find
8 the qualified candidates to double the staff.

9 Q. This is something you looked into, you investigated
10 this before you gave your number to Mr. Hampton?

11 A. Maybe not the level of investigation that you're
12 seeking, but, again, I felt like we would be able to find
13 the candidates to --

14 Q. Mr. Bengé, you already told me that you didn't
15 account for the competitive market.

16 You didn't account for the fact that it's hard
17 to find qualified candidates.

18 You didn't account for increased demand or how
19 hard it would be to pay these people.

20 You already testified to those things.

21 A. Correct.

22 Q. Right.

23 Okay. All right. So as you probably know,
24 Oracle is alleging that Rimini Street began building its
25 business through copyright violations beginning in 2006.

1 Before you talked to Mr. Hampton, you did not
2 analyze whether a remote-only model would have been
3 feasible in 2006 or 2007; right?

4 A. My opinion was that it would have been feasible
5 based on my experience and having, again, worked with the
6 remote clients we had.

7 Q. Mr. Benge, this might be a good time for me to
8 remind you that you're testifying under oath today.

9 A. Yes, I understand that.

10 Q. Okay. And you know that in your deposition you also
11 testified under oath; right?

12 A. Yes.

13 Q. And you never discussed 2006 or 2007 with
14 Mr. Hampton, did you?

15 A. No, and that's before I started at the company as
16 well.

17 Q. That's right. And you never discussed it.

18 A. No.

19 Q. Okay. So if he's drawing any conclusions about 2006
20 and 2007, that's not based on information he got from you?

21 A. No. We would have had a very small -- I think we
22 only had one client in 2006.

23 Q. We're going to talk about that too.

24 But I just want to make clear, if Mr. Hampton
25 has any information about 2006 or 2007, that did not come

1 from you; right?

2 A. Correct.

3 Q. And at your deposition when you were asked about
4 this, you said that your conclusion about number of
5 employees was reached by focusing on the current situation;
6 right?

7 A. Yes.

8 Q. Okay. And you were asked about actual numbers in
9 2009 during your deposition, and you said, "I was focused
10 on the current situation." Right?

11 A. Yes.

12 Q. Okay. And that meant 2012 when your deposition was
13 taken?

14 A. Yes.

15 Q. Right. You were also asked whether your numbers --
16 you had given numbers about 2008. Do you remember that?

17 A. Yes.

18 Q. And again there you said, "I was thinking about the
19 current situation." Right?

20 A. Yes.

21 Q. Okay. And, again, that meant 2012.

22 A. Yes, I believe so.

23 Q. Okay. So when your counsel examined you today, and
24 he said you looked at this from the beginning, that wasn't
25 the case, was it? You were focused on the current

1 situation, which meant 2012; right?

2 A. I had a lot more clients in 2012 --

3 Q. Mr. Bengé, I'm asking you, today when you said when
4 you produced these numbers you were focused on from the
5 beginning, that's not true because what you were focused on
6 was the current situation, which is 2012. From the
7 beginning would have been 2006. Is that right?

8 A. That's right.

9 Q. All right. So we've covered 2008, 2009, 2006, 2007,
10 and we know that you didn't -- that you weren't looking at
11 those. How about 2010?

12 A. Again, my estimate on this was that it was going to
13 take double the resources for development --

14 Q. I'm just asking you about 2010 --

15 A. -- at this point in time. Double the resources --

16 Q. Is the answer to 2010 the same as the answer to
17 2006, 2007, 2008, and 2009?

18 A. My answer would apply across the years.

19 Q. Across all the years. So that would include 2010
20 and 2011?

21 A. Yes.

22 Q. Right. Okay.

23 All right. So let's focus, then, a little bit
24 on 2006 and 2007.

25 The first time that you even considered that

1 question was in the middle of your deposition when you were
2 asked about it; right?

3 A. Of level of effort it would take to get a
4 remote-only model? Obviously I put thought into it before
5 the deposition.

6 Q. That's not what I'm asking.

7 You were asked specifically about 2006 and 2007.
8 You said you hadn't considered it.

9 A. Right.

10 Q. Right.

11 Okay. What you did say, though, is that in 2006
12 the City of Flint was the only client that Rimini had. Do
13 you remember saying that?

14 A. Yes.

15 Q. And you said that again today.

16 A. Correct.

17 Q. Okay. Mr. Benge, that is not true. Let's look at
18 the demonstrative if we could.

19 So this is a list of the 13 customers who
20 started at Rimini in 2006 with local environments. So
21 that's more than one; right?

22 A. Yeah. This is news to me. And I see clients on
23 here that I don't recognize at all. So it's possible -- I
24 don't know, maybe some of this was other product lines or
25 something.

1 It was my understanding that City of Flint was
2 the first PeopleSoft client we had in 2006.

3 Q. Well, that's not true either, actually. I think
4 it's called ENSCO is the first PeopleSoft customer, and
5 there are six PeopleSoft customers on this list.

6 So they're not customers out of your product
7 line, they're customers within your product line.

8 A. Again, this is, you know, two years before I started
9 there. But, you know, what I had heard was City of Flint
10 was the first that we had supported for PeopleSoft.

11 Q. Okay. So whoever told you that must have been
12 mistaken because obviously --

13 A. Or this is inaccurate. One of the two. I can't
14 say.

15 Q. Okay. So let's put up 2007.

16 So here's the list of the 29 customers who
17 started at Rimini in 2007 with local environments, and here
18 there are 24 PeopleSoft customers in case you're curious
19 about that.

20 Do you know about this?

21 A. This list? I recognize many of the client names,
22 yes.

23 Q. So I -- these lists, by the way, are stipulated to
24 by the parties. That means that the parties agree --

25 A. Okay.

1 Q. -- that this is the case. So do you also agree?

2 A. Yes.

3 MR. RECKERS: Objection.

4 THE WITNESS: Like I said, I recognize many of
5 them here on this list, but this is getting closer to when
6 I started at the company.

7 BY MS. DUNN:

8 Q. Okay. So when you said that the City of Flint was
9 the only PeopleSoft customer, or the only customer Rimini
10 had in 2006, when you told the jury that today, that wasn't
11 true; right?

12 A. I thought it was true. You've just corrected me.

13 Q. Right. And when you, in your deposition, talked
14 about the fact that you based your thoughts and feelings
15 about 2006 on this assumption that you only had one
16 PeopleSoft customer, that was a bad assumption that you
17 made. That was wrong; right?

18 A. Based on --

19 MR. RECKERS: Objection, foundation, Your Honor.
20 He doesn't know anything about these lists. He's testified
21 to that.

22 MS. DUNN: Your Honor, I'm asking --

23 THE COURT: Overruled. He's testified to that.
24 She's entitled to cross-examine his answer.

25

1 BY MS. DUNN:

2 Q. Do you need to --

3 A. The question again?

4 Q. Yes. So in your deposition, when you said that the
5 reason that part of your conclusions about 2006 and 2007
6 were based on the fact that you really didn't have many
7 customers then, and City of Flint was the only customer
8 Rimini had in 2006, that was incorrect; right?

9 A. Yeah. That is what I said in my deposition, I
10 believe, yes.

11 Q. That City of Flint was the only Rimini Street
12 customer?

13 A. Yes.

14 Q. Right. So any assumptions that you made or
15 conclusions would have been wrong?

16 A. Again, I'm not intimately familiar with the client
17 list for the period prior to when I started.

18 Q. Right. You weren't familiar, so whatever
19 conclusions you drew based on that assumption would have
20 been wrong and based on a faulty assumption; right?

21 A. For that period.

22 But, again, you know, I stick by my -- what I
23 said, that doubling of resources would have taken care of
24 it.

25 Q. Right. But, Mr. Benge, I think you'll appreciate,

1 and I'm sure the jury appreciates that your assumptions
2 that led to that conclusion are very important.

3 A. Sure.

4 Q. And so when we've discovered in your testimony
5 today, like right now, that they're faulty assumptions,
6 that matters. Do you understand that?

7 A. Yes.

8 Q. Okay. So, so far we've primarily been speaking
9 about the number that you gave Mr. Hampton so that he could
10 calculate that low damages number.

11 And I'd like to switch gears a little bit and
12 talk about what actually happened during 2006 to 2011.

13 So again here we're talking about what did
14 Rimini Street actually do between 2006 and 2011. Okay?
15 I'm not asking you here what you knew in 2012. Do you
16 understand that?

17 A. Yes.

18 MS. DUNN: Okay. All right. So let's put
19 Plaintiffs' Exhibit 62 on the screen, and if we could just
20 blow up the top so we can see what this is. This is -- you
21 saw this on direct. Your counsel asked you about this.

22 Oh, again.

23 Your Honor, I move to admit. I understand
24 there's no objection.

25 COURTROOM ADMINISTRATOR: It's in.

1 MR. RECKERS: No objection.

2 MS. DUNN: Thank you.

3 Okay. So I think -- let's go down to his email.

4 BY MS. DUNN:

5 Q. So this is an email that you sent to Brian Slepko
6 about remote versus internal environments.

7 A. Yes, that's correct.

8 Q. Right. And so, actually, before you write your
9 email, Slepko says,

10 "Jim," meaning you, "I'm having a heated
11 discussion with the JDE guys about remote versus internal
12 environments and I'm hoping you can provide a few bullet
13 points about why remote environments are a pain to work
14 with. Nothing detailed."

15 You write, "Perfect timing. Sara is stuck with
16 system testing on ConAgra Foods because we can't get into
17 their remote environment."

18 "It's going on three hours now and we haven't
19 reached out to the client yet."

20 I should also say this email is from November of
21 2009; right?

22 A. Yes.

23 Q. So at the time you got this email, you're in the
24 midst of having a problem with a remote environment.

25 A. Correct.

1 Q. Not atypical; right?

2 A. Not entirely uncommon, no.

3 Q. Not uncommon. And it was taking hours to resolve?

4 A. Uh-huh.

5 Q. And it says you hadn't even told the client yet,
6 even though the work is taking them -- the work for the
7 client is taking hours to resolve.

8 Were you keeping it from the client?

9 A. No, none at all. I think the issue here -- let me
10 read this again.

11 So Sara logged the high priority environment
12 ticket at 7:38. Ed Freeman picked it up at 10:45. Looks
13 like maybe Ed picked up the ticket but hadn't reached out
14 to the client to get it resolved yet. He may have been
15 busy with another issue or something.

16 But, you know, these types of things, sometimes
17 they take time, a matter of getting ahold of the client
18 and getting --

19 Q. Wait. I'm sorry. You said it's a matter of getting
20 ahold of the client? Is that what's going on here? I
21 don't see that.

22 This just said you hadn't even told the client
23 yet. You haven't even reached out to the client.

24 A. Yeah.

25 Q. It wasn't a problem of getting ahold of the client,

1 you hadn't even tried to find the client.

2 A. Yeah. It sounds like Ed had picked it up, maybe it
3 got assigned to him, but he hadn't reached out to the
4 client yet, yeah.

5 Q. Right. So it wasn't -- you weren't having a problem
6 getting ahold of the client, you hadn't tried to tell the
7 client.

8 A. Yeah, the same sort of issue could have happened
9 with an in-house issue.

10 Q. All right. Let's move on to some of the challenges
11 that you described. I know you went through these with
12 your counsel, so we're not going to belabor them.

13 You also say these are the key challenges.
14 Presumably that means these aren't even all the challenges.

15 But one of the problems is you have to rely on
16 the client to start and stop the servers. Right?

17 You have to coordinate backups and restores with
18 the clients.

19 Sometimes you can't even take care of simple
20 issues like extending the tablespace. And I won't even ask
21 you what that is.

22 Sometimes the clients won't even give you access
23 that let you in and out of the environment.

24 There are security headaches, which we'll talk
25 about in a little bit.

1 No two remote environments are alike, which is
2 very different from in-house environments when you can, you
3 know, clone and replicate.

4 There are challenges with automation, and there
5 are performance issues. Right?

6 These are all the challenges. These are just
7 some of the key challenges that you identified --

8 A. Yes.

9 Q. -- right? Okay.

10 Down here under Performance, you say,

11 "With many of our remote environments, we've
12 experienced horrible performance (e.g., Metro Vancouver)."

13 A. Uh-huh.

14 Q. And Metro Vancouver came up on direct also; right?
15 You remember your counsel asked you about this?

16 And what you said is that -- while this email is
17 in November of 2009, you told your counsel that you had
18 been able to solve the problems with remote environments,
19 the ship in a bottle, in a bottle, in a bottle problem,
20 that you had been able to solve that by 2011; right?
21 That's what you told your counsel?

22 A. I wouldn't say it was solved for all environments,
23 but, certainly, you know, we had determined better remote
24 access methodologies.

25 And some clients we didn't have performance

1 issues with. Some remote clients we didn't have
2 performance issues with.

3 Q. Okay. When you say "some," what do you mean? You
4 use the word "some" a lot, and it's not a specific number.
5 What does "some" mean?

6 A. Well, I could probably count on one hand the number
7 of environments that we had really bad performance issues
8 with, Metro Vancouver being one of them.

9 Q. Okay. When you say, you know, "we didn't solve this
10 for all clients, we solved it for some clients," I --

11 A. Some of them we didn't have the problem to begin
12 with, right? Once it was -- when an environment came
13 onboard, it was fine from the get-go.

14 Q. But, Mr. Benge, we're going to see a lot of
15 documents where Rimini Street employees are complaining
16 about having trouble with remote environments. It's very
17 well established that they were difficult.

18 A. Yes.

19 Q. So what I'm asking you is something different, which
20 is you used the word "some." And it would be good to know
21 when you say "some" whether you have an actual number in
22 mind.

23 A. No.

24 Q. No. No mathematical calculations, just --

25 A. No, I -- just -- if I was to throw a number out

1 there, I would say, again, maybe we had performance issues
2 with, you know, less than 10 percent of the remotes.

3 Q. Okay. I don't -- we don't want you to throw any
4 numbers out. I think --

5 A. Well, I would have to sit down and go back and
6 analyze each and every one of our clients to give you a
7 concrete number, but we could come up with that.

8 Q. So when you say "some," you don't really know;
9 right? Is that --

10 A. All I know is we definitely, definitely had remote
11 environments that we didn't have performance issues with.

12 Q. As you sit here, when you say "some," you don't
13 really know what that means as far as numbers; right?

14 A. Concrete number, no.

15 Q. Right. Okay.

16 A. I don't have an exact count, no.

17 Q. Let's talk about Metro Vancouver.

18 Metro Vancouver is creating horrible performance
19 problems in 2009, and you testified earlier that you solved
20 these problems for some clients by 2011.

21 So if we could look at --

22 MS. DUNN: Has this been marked as an exhibit?

23 COURTROOM ADMINISTRATOR: It says 5516 at the
24 bottom.

25 MS. DUNN: All right. Your Honor, we move to

1 admit Exhibit 5516.

2 MR. RECKERS: No objection.

3 THE COURT: It's admitted.

4 (Plaintiffs' Exhibit 5516 received into
5 evidence.)

6 BY MS. DUNN:

7 Q. So, this is an IM exchange between somebody named
8 Kimberly Martinez, Kimberly2299, and somebody unknown, who
9 works in quality assurance.

10 And if you go several lines down from the top,
11 Kimberly2229 says,

12 "I haven't gotten very far yet. Still working
13 on stupid MVC."

14 MVC stands for Metro Vancouver; right?

15 A. That's correct.

16 Q. Okay. So this is email -- or this IM is from
17 October of 2010, and it sounds like the team had not gotten
18 very far in fixing the problem.

19 A. We hadn't addressed it with Metro Vancouver. They
20 ultimately went inactive. They are no longer a current
21 client with us.

22 Q. Okay. So it wouldn't be your testimony, then, that
23 this problem had been solved by 2011; right?

24 A. Not for that particular client, certainly.

25 Q. Okay. Let's talk, then, about -- you talked a lot

1 about security in your direct examination.

2 One of the issues with remote environments and
3 security is that customer networks are configured
4 differently, and so remote access has to be configured
5 differently for different customers; right?

6 A. Yes.

7 Q. So you would say -- I presume one size does not fit
8 all. Would you say that?

9 A. That's true. Different clients will use different
10 software packages, you know, from Sysco or Juniper
11 Networks, or, you know, multiple companies, multiple
12 different access methods.

13 Q. Right. And to have a remote environment, Rimini has
14 to go through a customer's firewall, is that --

15 A. Yes. And there's a couple of ways that that can be
16 accomplished.

17 Q. Okay. So if you go through the firewall, then
18 Rimini has access to customer data; right?

19 A. Not -- not -- if they set things up properly, we
20 shouldn't have access to production, we should have access
21 to a portion of their network that's dedicated for the
22 environments that we're using for development and testing.

23 Q. Okay. But some customers limited access to Rimini
24 Street sometimes saying only one employee could have access
25 to an environment at a time or limiting to specific people,

1 right, for security reasons?

2 A. Yes.

3 Q. And sometimes Rimini Street didn't even have access
4 to the entire environment for these security reasons;
5 right?

6 A. In some cases, yes.

7 Q. Right. And sometimes Rimini Street for security
8 reasons on the customer's behalf, customer said you can't
9 have any access at all; right?

10 A. I can't think of any payroll clients that -- all
11 payroll clients that we've supported we have access either
12 to in-house or to a remote environment.

13 Q. Right. But I think even in your deposition you
14 acknowledge that some clients didn't want Rimini to have
15 access for security reasons?

16 A. Are you referring to remote access?

17 Q. Correct.

18 A. Yes.

19 Q. Yes.

20 Okay. You talked, and your counsel asked you
21 about holistic security. Mr. Ravin testified last week
22 also about this concept of holistic security.

23 And he agreed that holistic security means don't
24 put security in the software, just put it in the firewall
25 at your place of business.

1 That was a question, and he said yes. Do you
2 agree with that?

3 A. I think holistic security, you have to have security
4 at every level. I think that people and process are very
5 important, but obviously you wouldn't completely overlook
6 security at every layer, including the application.

7 Q. I'm just asking whether you agree with what
8 Mr. Ravin agreed with, which is that holistic security
9 means don't put security in the software, put it in the
10 firewall at your place of business.

11 Do you agree with that?

12 A. I disagree a little bit because you would have it in
13 both. You'd want to put -- you'd definitely want to have
14 good firewall security, but you would still have
15 application level security.

16 There's no taking the application security out
17 of PeopleSoft. It's built into it. It's part and parcel.
18 It's there.

19 Q. So was Mr. Ravin wrong when he said that?

20 A. Maybe taken out of context, or words were
21 misconstrued.

22 But I think what he was probably trying to get
23 at was that, again, holistic security, you look at all of
24 the aspects of security. One layer isn't all you look at.
25 You have to look at the big picture.

1 Q. We're just talking about two different things.

2 One is security in the software, and the other
3 is telling the customer that it's up to them in their
4 firewall, and Mr. Ravin said you tell them it's up to them
5 and their firewall.

6 A. Not entirely. That's one aspect of it.

7 Q. Okay. So it sounds like you might disagree with
8 him?

9 A. Slightly.

10 Q. Do you agree with him that Rimini Street cannot
11 provide security updates? It's not possible for Rimini
12 Street to provide updates for Oracle software because they
13 don't have access to the source code?

14 A. We can provide security updates to the PeopleSoft
15 application, not to the PeopleTools where we don't have the
16 source code.

17 But at the application layer, we can provide
18 security updates to things like -- you know, maybe there's
19 an issue on the pages related to user profiles or roles or
20 permission lists. Those are things that we can address.

21 Q. So Mr. Ravin was wrong when he said it's not
22 possible to provide security updates.

23 A. He may have been referring to the PeopleTools layer,
24 not the application layer.

25 Q. But between 2006 and 2011 Rimini did not offer

1 security updates --

2 A. We haven't had a client --

3 Q. -- you would agree with that; right?

4 A. True. We haven't issued any security patches, we
5 haven't had clients that have reported security issues to
6 us.

7 Q. Right. So if Rimini Street says it provides a
8 replacement for vendor-level support, which usually
9 includes security updates, you would agree that Rimini
10 Street did not provide those?

11 A. Not at the tools layer.

12 In our contract with our clients, it's very
13 clear that we can't provide updates to the tools layer
14 because we don't have the source code for that.

15 Q. Mr. Benge, I'm not talking about the tools layer.
16 I'm talking about, between 2005 and 2011, Rimini Street did
17 not offer security updates. The CEO of the company agreed
18 with that. Do you disagree?

19 A. If there had been an issue reported at the
20 application layer, we could have been able to address it.

21 Q. Did Rimini Street offer security updates?

22 A. We could at the application layer where we had the
23 source code, but not at the tools layer where we didn't
24 have the source code.

25 Q. Okay. What you could have done and what Rimini

1 Street offered to its customers, and what the CEO thinks it
2 offered to its customers, is something different. You
3 didn't offer those security updates, Mr. Benge, did you?

4 A. Again, we didn't have occasion to. But if a client
5 called with an application security issue, we absolutely
6 could have helped them with it, or at a minimum the support
7 team can help mitigate issues, even --

8 Q. Mr. Benge, I really don't know why this is so
9 difficult. Did you offer the security updates? Yes or no?

10 A. If a client called and had an issue with the
11 application layer, we would have helped them with it, yes.

12 Q. I understand you're saying you could have, but you
13 didn't, right?

14 A. Because there was no request for that service.

15 Q. Right. You didn't do it. Did you do it?

16 A. Only -- the only reason I'm saying no is because
17 there wasn't a request from a client to do it.

18 Q. Okay.

19 Okay. So Jeff Allen is a senior PeopleSoft
20 developer; right?

21 A. Yes.

22 Q. Smart guy, generally?

23 A. Eccentric, yes.

24 Q. Is he also -- you respect him, he's intelligent?

25 A. Yes.

1 Q. Okay. So, like you, Jeff Allen has been at Rimini
2 Street since 2008, he also used to work at PeopleSoft and
3 then at Oracle; right?

4 A. I don't remember his previous employment.

5 Q. Okay. Fair enough.

6 Let's look at Plaintiffs' Exhibit 51, and this
7 is -- the jury has seen this a few times. This is Jeff
8 Allen's weekly report about -- speaking about remote
9 environments.

10 And if we could just go to the part where he
11 says, "We really need to stop adding any new remotes and
12 wherever possible bring them in-house."

13 Do you see that?

14 A. Yes.

15 Q. Okay. And then this is the part that is now
16 infamous in this case, the building a ship in a bottle, in
17 a bottle, in a bottle problem; right?

18 A. Yes.

19 Q. And he goes through, as you did, in that exhibit we
20 saw earlier, the numerous problems that Rimini Street
21 engineers and others had with remote support; right?

22 A. Correct.

23 Q. Okay. So we've already been over that. I won't go
24 over them again.

25 I would just draw your attention to his

1 conclusion at the bottom of this email, where -- sorry, at
2 the bottom of this report which says, "effort applied to
3 eliminate remotes."

4 So it seems like even at the date of this report
5 in 2009, people are talking about eliminating remotes. Is
6 that fair?

7 A. Yes. We never did eliminate that as an option,
8 though, for our clients.

9 Q. Right. When Mr. Ravin was shown this document, and
10 he was asked about the ship in a bottle, in a bottle, in a
11 bottle problem, his response was that doesn't mean
12 anything, that's simply an engineer's commentary.

13 Mr. Ravin was pretty dismissive of that, wasn't
14 he?

15 A. I think he was accurate. I mean, it's a technical
16 problem that can be solved by technical people. Get the
17 remote architect set up properly. Essentially do it right
18 when the client comes onboard.

19 Q. That's just what the engineers think. That's the --
20 is that management's view? That's just the engineers?

21 A. Well, certainly, I think that the problem we had
22 with Metro Vancouver is a technical problem and one that
23 could be solved by the technical staff.

24 Q. This is talking about more than Metro Vancouver, and
25 what I'm actually asking you about is the reaction to this,

1 which is to take the engineers who worked on these things
2 and who are raising concerns to management, and say, you
3 know, that's just an engineer's commentary.

4 Do you agree with that?

5 A. Some of this, yeah, this is just commentary. I will
6 admit that he was probably the squeakiest wheel on the team
7 when it came to his frustration with remote environments.

8 Q. All right. Let's go to page 2.

9 So just -- Jeff Allen also says this, which you
10 might find very interesting. He says,

11 "Time required by staff to complete the task on
12 a remote environment is generally three times that required
13 for one in-house."

14 So Jeff Allen is saying it takes three times to
15 do in remote environments what you do in in-house
16 environments.

17 He has just as much experience as you working
18 with the software, but you said two times; is that right?

19 A. Yes. That was his opinion at the time. I also know
20 that we have another email from him where he said 10
21 percent more. So --

22 Q. Right. Did you talk to him before you formulated
23 your number?

24 A. Again, it's difficult to recall. I talk with all
25 our developers on a daily basis, but, no, I don't think I

1 sat down with him specifically when formulating the
2 estimate for --

3 Q. Even though he was the squeakiest wheel?

4 A. No, I had read all of his status reports. I was
5 well aware of his opinions.

6 Q. Yeah, and it turns out your number might not have
7 been so conservative; right? Because he's saying three
8 times.

9 A. The only place that I can think of where we have a
10 number like this is in this one exhibit.

11 I just said that the only place that I've seen
12 this three times estimate is in this one status report.
13 I've never seen that estimate anyplace else.

14 Q. But Mr. Allen's number is from before this
15 litigation; right?

16 A. It was.

17 Q. Yeah, and it's not a product of conversations with
18 lawyers; right?

19 A. It's one developer's opinion on a team, not in
20 management, not -- yes.

21 Q. All right. So we discussed just last week how
22 Mr. Ravin was dismissing these concerns as not meaning
23 anything, and you have agreed with that.

24 Let's look at Plaintiffs' Exhibit 478 which is
25 an email from you to Mr. Ravin, and, actually, if we can

1 start with Mr. Ravin's email to you on page 3.

2 So he's saying -- starts with, "Hey, Jim."

3 Mr. Ravin says,

4 "I'm concerned about what seems to also be a
5 growing number of quality assurance issues."

6 He's raising this concern with you.

7 You respond in an email, if we can go to page 2,
8 to Mr. Ravin, and you say, "I'm sure you understand that
9 we're stretched."

10 This is in 2008.

11 And a few paragraphs down you specifically
12 identify one of the reasons that you're stretched as being
13 remote environments, and you say,

14 "Remote development has been a thorn in our
15 side."

16 A. I also go on to say, "Some remote development
17 environments are acceptable."

18 Q. I understand that. I'm asking you specifically
19 about this part where you say,

20 "It's not an efficient way to do development and
21 we lose consistency with all of these different remote
22 environments."

23 So now it's not Jeff Allen, an engineer, telling
24 Mr. Ravin about these problems, it's you --

25 A. Yes.

1 Q. -- his vice-president for PeopleSoft Development,
2 part of management. You're raising your concern. Is that
3 fair?

4 A. For some environments, yes.

5 Q. Right. All right. So let's look at Mr. Ravin's
6 response to you.

7 He says he certainly appreciates the pressure
8 cooker you're in, and then in the next sentence he says
9 what I can only really summarize it saying suck it up.

10 He says, "As you know, all these issues are our
11 burden to bear."

12 And nowhere in his email does he address your
13 concern, a management concern, at going -- the engineer
14 concerns, about remote environments; right? He doesn't
15 address that?

16 A. We're all doing the best we can getting done what we
17 needed to do --

18 Q. Mr. Bengé, does he address your concern in the
19 email?

20 A. He talks about get additional dev track licenses
21 approved.

22 "What else can we fast-track for you that will
23 help here? Just name it and we'll get it."

24 Q. Right. No mention of remote environments.

25 All right. So let's look at what you do with

1 this email. You send it to Dennis Chiu.

2 "My exchange with Seth," dot dot dot.

3 A. Yeah, just filling Dennis in on --

4 Q. It doesn't sound like you found his response very
5 satisfying.

6 A. Just informing him of the conversation that I had.

7 Q. Right.

8 Okay. All right. So we saw earlier the email
9 from Ed Freeman where he says that remote environments are
10 insane and to fire up business models to offer them.

11 Let's look at Plaintiffs' Exhibit 18 which also
12 discusses Rimini Street's policy with regard to remote
13 environments, and if we could start with page 2.

14 COURTROOM ADMINISTRATOR: That one is
15 preadmitted.

16 BY MS. DUNN:

17 Q. Beth Lester is writing to Seth Ravin.

18 If we could go a little bit down,

19 "It's still unclear to me where Moraine," that
20 means Moraine Park, they're a customer, "got the idea that
21 remote development is one of our service options."

22 So remote wasn't supposed to be an option, and
23 this email -- basically what happened is the salespeople
24 messed up and they promised something they shouldn't have
25 promised. Is that right?

1 If you want to take a moment to look at it.

2 A. I don't know if that's true or not. Again, this is
3 from before I started at the company. I haven't seen this
4 email before, so I don't know.

5 Q. So Seth Ravin writes back cc'ing some of the folks
6 high up in the company. He says,

7 "We have to resolve ignorance on these options
8 on the part of the sales team."

9 So the sales team obviously promised something
10 they shouldn't have promised.

11 But lower down he says,

12 "We'll do this because we must get a reference
13 from Moraine Park."

14 So the references were very important. You know
15 about that; right?

16 A. Sure. Good references are an important --

17 Q. So they're willing to make an exception because they
18 need the reference, and then Mr. Ravin articulates what the
19 policy of Rimini Street actually is.

20 "The remote deal," he says -- I think that's a
21 little farther down --

22 MR. RECKERS: Objection, foundation, Your Honor.
23 He testified he has not seen this document.

24 THE COURT: She hasn't asked the question yet.
25 I'll allow her to do that.

1 MS. DUNN: One more paragraph down from where
2 you were, Matt.

3 BY MS. DUNN:

4 Q. He says,

5 "The remote deal is not intended to be any kind
6 of strategic change of model but a one-off project that we
7 will try to minimize as a last resort for other client
8 opportunities."

9 Do you see that?

10 A. Yes.

11 Q. So the truth is Rimini wanted to take this away as
12 an option; right?

13 MR. RECKERS: Same objection.

14 THE COURT: Overruled.

15 THE WITNESS: I wouldn't know. Again, I wasn't
16 present at that time in the company. I do know we added
17 remote clients later on when I was there.

18 BY MS. DUNN:

19 Q. All right. Let's go then to Plaintiffs' Exhibit 52,
20 which is from February of 2009 when you were there.

21 A. Yes.

22 Q. Right? You were there in 2009?

23 A. Yes.

24 Q. Okay. So here it says -- this is an email from
25 Brian Slepko. Jeff Allen and Dennis Chiu are on this

1 email.

2 And then the second paragraph says,

3 "We have instructed the sales team to push as
4 hard as possible back on any prospects that want to
5 consider remote and are trying to take it away completely
6 as an option."

7 So this is from a time when you were there, and
8 this email is from Brian Slepko.

9 A. Yes.

10 Q. And he had a pretty high up position in the company,
11 didn't he?

12 A. Yes.

13 Q. What was his position?

14 A. I think he was group vice-president? I may be
15 wrong. I'm sorry. I don't recall.

16 Q. Okay. So when I ask you whether there were
17 conversations about taking this away as an option by
18 management --

19 A. At the time it was Senior Vice-President Global
20 Operations. It's right there.

21 Q. Right. So if I ask you whether at this time in 2009
22 there were discussions by management about taking this away
23 as an option, the answer would be yes; right?

24 A. There were discussions. It was never taken away as
25 an option.

1 Q. Right. But that was -- management was discussing.

2 A. There were discussions, yes.

3 Q. Okay. So that makes it a little bit more than just
4 some engineer, just what some engineer thought; right?

5 A. Sure. I mean, there's discussions here about
6 potentially taking it away as an option. We never did.

7 Part of the reason why we pushed back and
8 preferred the in-house environments was just that we were
9 more efficient and effective in development.

10 Q. Okay. So the engineers didn't like them, they
11 caused delays, there were security problems, they caused
12 performance problems, and you were there at Rimini Street
13 when TomorrowNow shut down; right?

14 A. Yes, I was.

15 Q. Okay. So even when TomorrowNow had to continue --
16 discontinue local environments, Rimini Street decided to
17 keep them going; right?

18 We're talking about local environments; right?

19 A. Yes.

20 Q. TomorrowNow had to shut down its local environments,
21 and at that time in 2008 Rimini Street decided to keep them
22 going; is that right?

23 A. Yes.

24 Q. All right. And if we can just put up Exhibit --
25 Plaintiffs' Exhibit 30.

1 So here, Mr. Ravin is talking to a customer,
2 prospective customer, and he's telling this person that
3 TomorrowNow is moving to remote environments, and he makes
4 clear that this is a ridiculous policy, and that Rimini
5 Street is not going to do that.

6 Do you see that?

7 A. Yes.

8 Q. Okay. All right. Let's move quickly, then, to
9 Plaintiffs' Exhibit 286 as redacted. This was the
10 exhibit -- one of the exhibits that your counsel asked you
11 about in direct.

12 A. Yes.

13 Q. Okay. So this is -- this document that we're
14 looking at has been redacted because the larger document
15 contains Oracle's source code; is that right?

16 A. Yes, this -- this paragraph was originally developed
17 by PeopleSoft --

18 Q. I'm just asking you if the larger document from
19 which this is redacted contains Oracle's source code?

20 A. Yes.

21 Q. Okay. And source code is Oracle's intellectual
22 property. You would agree with that?

23 A. Yes.

24 Q. All right. So Oracle's code is protected by
25 copyright; right?

1 A. Yes.

2 Q. And you said on direct that at Rimini Street the
3 developers worked with Oracle's code; is that right?

4 A. Absolutely, yes.

5 Q. Right. And you said that they changed it; right?

6 A. Yes.

7 Q. And so that means that Rimini Street changed
8 Oracle's copyrighted code; right?

9 A. Correct.

10 Q. Okay. And in order to do that you said Rimini had
11 to use Oracle's software; right?

12 A. Yes.

13 Q. Okay. And then after changing it, you distributed
14 it to Rimini Street's customers?

15 A. Correct.

16 Q. Right.

17 All right. Can we look at this confidentiality
18 box? Do you see where it says confidentiality information?

19 "This module contains confidential and
20 proprietary information of Oracle; it is not to be copied,
21 reproduced, or transmitted in any form, by any means, in
22 whole or in part, nor is it to be used for any purpose
23 other than that for which it is expressly provided under
24 the applicable license agreement. Copyright 2008 Oracle.
25 All rights reserved."

1 Do you see that?

2 A. Yes, I do.

3 Q. Okay. So you just testified that after Rimini
4 Street modified Oracle's code, it then distributed it to
5 customers.

6 So on this document at the top there's a file
7 path name, and the jury already knows that these three
8 letter combinations are abbreviations for customers, for
9 Rimini Street customers.

10 So looking at this, can you tell whether this
11 was distributed to multiple customers?

12 A. Yes, it was delivered to multiple customers that
13 were on the 8.3 code line that had the same before version
14 of this program.

15 Q. Right. So the same version of this program, that
16 started with Oracle software changed by Rimini Street
17 developers, was distributed to multiple customers; right?

18 A. Yes.

19 Q. It looks like there are seven of those; right?

20 A. Yes.

21 Q. Mr. Benge, you knew that Rimini Street was using one
22 customer's environment to support other customers; right?

23 A. Yes.

24 Q. Did you ever think to say, hey, maybe we shouldn't
25 do this?

1 A. My thought was that we were, again, never giving a
2 client something that they hadn't already paid Oracle for.

3 No client was ever getting, you know -- like
4 Client A, if Client A was on a more recent tax update and
5 had received updates more recently from Oracle, and we had
6 another client with an older last tax update, we never had
7 cross-use there. The client never received anything that
8 they weren't already entitled to, that they already had
9 license for.

10 Q. So we already talked about the fact that the Court
11 found that Oracle's copyrights have been violated with
12 regard to PeopleSoft and Database. And all I'm asking you
13 is whether you ever thought to say, hey, maybe we shouldn't
14 be doing this?

15 A. I think we were very cautious in our approach and
16 trying to be very mindful of Oracle's intellectual property
17 rights and trying to do the right thing.

18 Q. Right. But now you're mindful of the Court's
19 ruling, and I'm just asking you whether you ever thought to
20 say, hey, maybe we shouldn't do this? Yes or no?

21 A. There are definitely occasions when --

22 THE COURT: Mr. Bengé, would you answer the
23 question, please.

24 THE WITNESS: Yes.
25

1 BY MS. DUNN:

2 Q. You thought maybe you shouldn't do it?

3 A. No.

4 Q. Okay. Now, you've answered basically the same
5 question yes and no.

6 A. I'm sorry, you'll have to --

7 Q. Here's what I'm asking you. You knew that Rimini
8 Street was cross-using; right? You knew this?

9 A. I hadn't even heard the term cross-use prior to this
10 litigation.

11 Q. You knew that Rimini Street was using one customer's
12 environment to produce updates for other customers?

13 A. Yes.

14 Q. Distributing them. We just talked about that.

15 A. Yes.

16 Q. Okay. And then I asked you whether you ever thought
17 to say, hey, maybe we shouldn't do that?

18 A. Did I think that that was wrong? No. No. My
19 answer's no.

20 Q. Your answer before, though, two minutes ago, was
21 yes. Do you remember that?

22 A. I was confused by the questioning. I'm sorry.

23 Q. Okay. So pick one.

24 A. No.

25 MS. DUNN: Thank you very much, Mr. Benge.

1 THE COURT: Redirect examination?

2 REDIRECT EXAMINATION

3 BY MR. RECKERS:

4 Q. Mr. Bengé, Ms. Dunn asked you about your testimony
5 as to the percent of remote environments that had certain
6 concerns in the 2006 to 2011 timeframe. Do you remember
7 that?

8 A. Yes.

9 Q. It seemed like you want to say more about the
10 performance issues in particular in your discussion of
11 Metro Vancouver. So my question is, what percent of the
12 remote environments had the performance issues?

13 A. I think it was relatively small. You know, two or
14 three of them come to mind as ones that were troublemakers
15 for us, Metro Vancouver being the top one.

16 Q. And by the end of the 2011, how many of the remote
17 environments had the performance issues?

18 A. We hadn't really been focusing on trying to correct
19 the problems at that time. You know, Metro Vancouver
20 continued to be a problematic client until the point that
21 they went inactive.

22 You know, I think if we were to move to a model
23 that was remote only, we would have focused a lot more on
24 addressing some of those challenges.

25 We had that big list of challenges. I think if

1 that was going to be the larger percentage of our clients,
2 we would have worked to address those challenges. Being
3 just 20 percent, it wasn't a priority.

4 Q. Okay. Ms. Dunn also asked you about the question of
5 holistic security. Do you remember that?

6 A. Yes.

7 Q. She asked you some questions about whether or not
8 Rimini could, indeed, provide application-level security
9 despite the lack of some source code access.

10 Do you recall that?

11 A. Yes.

12 Q. Okay. I'd like to pull up -- actually, I'd like to
13 move for admission of Defendants' Exhibit 3017, which I
14 don't believe there's an objection.

15 MS. DUNN: There is an objection, Your Honor.
16 There's no foundation for this exhibit. Same objection as
17 on direct.

18 MR. RECKERS: Your Honor, this is an Oracle
19 document. It provides a description of holistic security.

20 I'd like to ask the witness about the
21 requirements that Oracle provides as to holistic security
22 and whether Rimini can, in fact, provide what Oracle says
23 is holistic security.

24 THE COURT: I'm sorry. I don't have the
25 exhibit.

1 MR. RECKERS: I've got one.

2 THE COURT: I'm not going to allow you to pull
3 it up. You can cross-examine concerning -- it's not
4 admitted, but you can cross-examine on its basis -- excuse
5 me, examine, your direct examination -- on the basis of
6 that document.

7 BY MR. RECKERS:

8 Q. Mr. Bengé, in the context of holistic security are
9 you aware of that there's often -- are you aware whether or
10 not there are environmental assessments that are performed
11 when evaluating security?

12 A. Yes.

13 Q. The jury can't see it, but I'll refer to -- well,
14 you have the exhibit in front of you.

15 I want to ask you, in the PeopleSoft -- in the
16 PeopleSoft program, does it already come with
17 authentication procedures?

18 A. Yes.

19 Q. Does it already come with --

20 MS. DUNN: Objection, leading.

21 MR. RECKERS: Well, let me ask this.

22 BY MR. RECKERS:

23 Q. What security aspects already come with the
24 PeopleSoft program?

25 A. Some of them I've already spoken about.

1 You know, there's extensive authentication
2 functionality having to do with what users are allowed to
3 get in; a lot to do with access control and authorization.
4 So once they get into the application, what can they do?
5 What pages can they pull up? Whose data can they view?
6 You know, can you only view your own data? Can you just
7 view your team's data? Can you view every employee in the
8 company's data?

9 There's also extensive auditing functionality
10 within PeopleSoft. So you can keep track of who's gotten
11 in and changed salaries and things of that nature.

12 Q. And with respect to the security features in the
13 PeopleSoft application, to what extent can Rimini provide
14 security services with respect to those features?

15 A. As I mentioned, anything in the application layer,
16 anything where we have the source code, if called upon, if
17 there was a problem found, we could address that.

18 Things -- excuse me. Things in the tools layer
19 where we don't have access to the source code, those are
20 things that we wouldn't be able to change because we don't
21 have the source code, but there are ways that we could
22 mitigate those problems.

23 For example, let's say that it was discovered
24 that there was a fatal flaw in the authentication mechanism
25 of PeopleSoft. We could suggest to our clients that they

1 bypass that and use the functionality that allows for
2 external authentication.

3 What that means is you could rely on, like,
4 single sign-on where you sign on to your Windows machine,
5 you know, when you sign on to Windows and you enter user ID
6 and password, that information could be used to
7 authenticate the user rather than relying on the core tools
8 functionality should it have a security vulnerability in
9 it.

10 Q. Now, Ms. Dunn also asked you about whether or not
11 your opinions in this case were relied on specific
12 interactions with customers. Do you recall that?

13 A. Yes.

14 Q. Could you explain to the jury how often you interact
15 with Rimini's --

16 MS. DUNN: Objection. Misstates my prior
17 question. I asked whether his number that he produced to
18 Mr. Hampton relied on specific interactions with customers,
19 not whether his opinions in this case relied on specific
20 interactions with customers.

21 THE COURT: Rephrase your question. The
22 objection is sustained.

23 MR. RECKERS: Yes, Your Honor.

24 BY MR. RECKERS:

25 Q. Mr. Bengé, how often do you interact with Rimini's

1 customers?

2 A. Almost daily.

3 Q. And restricting my questions to before 2012, how
4 often did you interact with Rimini's customers that had
5 remote support?

6 A. Well, it's a smaller percentage, so not daily, but
7 probably at least, you know, once a week I was dealing with
8 a client that was a remote client.

9 Q. Did your interactions with customers influence your
10 opinions in this case?

11 A. Certainly.

12 Q. In what regard?

13 A. Well, you know, I've had many interactions with
14 them, come to know the remote environments, the challenges
15 associated with them, come to know what -- how flexible
16 clients are going to be with our requests for making
17 changes in those environments.

18 Q. And even -- well, with respect to clients that
19 Rimini supported with Rimini environments, did those
20 clients also typically have their own in-house
21 environments?

22 A. Absolutely. These clients, they like working with
23 us. You know, we're -- we've formed strong partnerships
24 with a lot of them. They're willing to work with us to
25 make changes in environments as needed.

1 Q. And how would Rimini work with clients who had their
2 in-house environments?

3 A. Well, I think that it would be easiest for new
4 clients, as they were coming onboard, that as a new client
5 came onboard, if we spelled out exactly what they needed, I
6 think we could get that; a little more challenge with the
7 clients we already have to go back to them and say, hey, we
8 want to change this, that, or the other thing. But I think
9 because of the relationship we had with them, they would be
10 willing to do that.

11 We talk with these clients all the time. We're
12 making requests on a very frequent basis, you know. We get
13 to know them really well.

14 We call them up and say, hey, we're having a
15 problem with this server. We work with their IT people, we
16 work with their functional people. We have a relationship
17 with them, and they work with us.

18 Q. Now, Ms. Dunn suggested that your testimony in this
19 case was influenced by Mr. Ravin's deposition testimony.
20 Do you recall that?

21 A. Yes.

22 Q. Had you reviewed or aware of the contents of
23 Mr. Ravin's deposition testimony before Ms. Dunn mentioned
24 it to you?

25 A. No.

1 Q. Did Mr. Ravin's testimony, or even him personally,
2 influence your opinions in this case in any way?

3 A. No.

4 Q. What did influence your opinions, sir?

5 A. My experience and working with the existing
6 client-hosted environments that we had.

7 Q. And did communications with your team members also
8 influence your opinions?

9 A. Yes, certainly. You know, having read those weekly
10 status reports, working with the QA team, understanding
11 what their concerns and challenges were, those remotes,
12 that played into the estimates that I came up with.

13 MR. RECKERS: Okay. So if we could -- I don't
14 think we have it, but could we pull up Plaintiffs'
15 Exhibit 5516? The one we just looked at?

16 And if we could zoom in on -- starting about
17 line where -- the timestamp 17:52:17 to -- going down to
18 about 17:52:53. And if we could highlight the line at
19 17:52:26.

20 BY MR. RECKERS:

21 Q. Mr. Bengé, this is the exhibit that Ms. Dunn showed
22 you, the email exchange with Kim Martinez dated in October
23 of 2010. Do you see that?

24 A. Yes.

25 Q. Do you see what she's mentioning here about how long

1 it takes with -- to work with a remote, or as she says
2 "dang remote"?

3 A. Yes.

4 Q. What does she say?

5 A. She says, "I think it takes twice as long as a
6 hosted one."

7 Q. Is this comment from Ms. Martinez in 2010 consistent
8 with your opinion in this case?

9 A. Yes.

10 MR. RECKERS: No further questions.

11 THE COURT: Recross, Ms. Dunn?

12 MS. DUNN: Just very briefly, Your Honor.

13 RECROSS-EXAMINATION

14 BY MS. DUNN:

15 Q. Mr. Benge, so counsel just asked you about security
16 updates, and you said security updates that are in the
17 software that already come with PeopleSoft. That means it
18 comes from Oracle; right?

19 A. The core security functionality? Yes.

20 Q. Right. So the security -- the code that you're
21 talking about for security that counsel was asking you
22 whether Rimini could provide, that comes from Oracle;
23 right? That's not Rimini code.

24 A. The PeopleSoft software, yes, it's Oracle's IP, yes.

25 Q. Right.

1 So let's look at Exhibit 5455, because we had
2 some disagreement about whether Rimini Street provides
3 security updates or provided security updates. I think you
4 ultimately agreed with Mr. Ravin that that was not
5 possible.

6 But let's look at this email. It's from Krista
7 Williams. The jury met her the other day.

8 Incidentally, do you know why she was demoted?

9 A. I'm not familiar with that.

10 Q. Well, okay.

11 So she cites a question, "Are security patches
12 part of the maintenance agreement?"

13 And she says, "No. Rimini Street does not have
14 the ability to modify the binary code that comprises the
15 tools foundation, thus we do not provide updates that are
16 equivalent to Oracle's critical patch security updates."

17 A. Note that she's talking about the binary code and
18 the tools foundation, PeopleTools and WebLogic, she's not
19 talking about the PeopleSoft application.

20 Q. Right. But we've already discussed, and you've
21 agreed, that Rimini did not offer security updates?

22 A. Not for the PeopleTools, no.

23 Q. But we agreed generally, that was your testimony
24 when I cross-examined you just before, you said no?

25 A. But we could provide them for the application. We

1 hadn't because we hadn't had client requests for it.

2 Q. I understand that you would like to say more, but --
3 all I'm asking you was whether they did, and your answer
4 before was no. Is that still your answer?

5 A. Yes.

6 Q. Great. All right. Just one last question.

7 So I just want to make clear that you're
8 expecting the jury to believe that this number that you
9 came up with based on no calculations, no discussion with
10 customers, no discussion with the onboarding team, no
11 discussion with various engineers, not accounting for what
12 it would take to get offshore labor that you say would
13 provide all these resources, not accounting for how
14 difficult it would be to staff or how overstaffed you were,
15 that this number that you just came up with two weeks
16 before Mr. Hampton's report was issued, that that's
17 something that you came up with, and the fact that it
18 matches what Mr. Ravin came up with the year before is a
19 coincidence, as you testified earlier. I just want to
20 confirm that.

21 A. Yes, and I think we saw other examples where other
22 people --

23 Q. But your answer, Mr. Bengé, to my question was it a
24 coincidence, would you like this jury to believe it was a
25 coincidence, your answer is yes?

1 A. Yes.

2 MS. DUNN: All right. Thank you very much.

3 Your Honor, we have no further questions.

4 THE COURT: All right.

5 Mr. Reckers, anything further?

6 MR. RECKERS: No, Your Honor.

7 THE COURT: All right.

8 Mr. Bengé, that will complete your testimony.

9 You may step down. Thank you.

10 THE WITNESS: Thank you.

11 THE COURT: Defendants' next witness, please.

12 MR. RECKERS: Your Honor, defense call by video
13 deposition Mr. Charles Phillips. He's a former Oracle
14 executive. It's about 10 minutes.

15 The exhibits are -- I believe there's no
16 objection, 303 and 336.

17 COURTROOM ADMINISTRATOR: Are these DTX? 303
18 and 336?

19 MR. RECKERS: That's correct.

20 THE COURT: Are they admitted -- or there's no
21 objection?

22 MR. RECKERS: I'd move for their admission. I
23 don't believe they're objected to.

24 THE COURT: All right.

25 MR. ISAACSON: No objection, Your Honor.

1 THE COURT: They are admitted.

2 (Defendants' Exhibits 303 and 336 received
3 into evidence.)

4 (Videotape deposition of Charles Phillips
5 played as follows:)

6 PAGE 7:13 TO 7:22 (RUNNING 00:00:21.150)

7 "Q. Mr. Phillips, are you aware that
8 Oracle has sued Rimini Street for copyright
9 infringement, breach of contract, inducement
10 to breach of contract, Computer Fraud and
11 Abuse Act, and several other claims?

12 A. Yes.

13 Q. And that lawsuit was filed in January of
14 2010. That was while you were president of
15 Oracle; is that correct?

16 A. Yes.

17 PAGE 17:18 TO 17:21 (RUNNING 00:00:09.524)

18 Q. While you were president of Oracle,
19 Oracle acquired the PeopleSoft, JD Edwards
20 and Siebel software platforms; right?

21 A. Yes.

22 PAGE 60:16 TO 60:22 (RUNNING 00:00:18.770)

23 Q. When you talk about funding the
24 development, does Oracle bucket the support?
25 In other words, do people who pay PeopleSoft

1 support -- does that go directly to fund the
2 development of PeopleSoft applications, or
3 does the support money go to generally fund
4 all sorts of application development?

5 PAGE 60:23 TO 61:09 (RUNNING 00:00:36.337)

6 A. Well, the way you allocate resources for
7 developers is based on the revenue for that
8 product. So you can't have a mishmash where
9 you have, you know, thousands of development
10 on a product that doesn't have much support
11 revenue to support it. And so I can't say
12 it's a direct connection where dollar wired
13 to a specific account or something like that,
14 but certainly that's the way you make --
15 allocate budgets. And based on the money
16 that product's generating, it can support a
17 certain number of developers.

18 PAGE 62:14 TO 62:21 (RUNNING 00:00:17.583)

19 Q. But at the end of the day, isn't it just
20 Oracle's -- it's just money Oracle's making
21 and it's allocated as Oracle sees fit. Do
22 you agree with that?

23 A. Oracle does -- yeah, Oracle does allocate
24 it as it sees fit; but it sees fit to do so
25 relative to the money the product is making,

1 like any other rational manager would do.

2 PAGE 63:23 TO 64:07 (RUNNING 00:00:32.825)

3 Q. Are there ever years where like for a
4 given year, maybe PeopleSoft requires a lot
5 of updates or a new version and maybe JD
6 Edwards doesn't?

7 A. Products that are that mature doesn't
8 usually change that much. You have a
9 dedicated development organization. And you
10 size that according to kind of the ongoing
11 revenue stream. It may change a little bit,
12 but usually not dramatically.

13 PAGE 65:02 TO 65:18 (RUNNING 00:00:47.655)

14 Q. Do customers understand that they're -- by
15 paying support, they're just -- they're
16 actually providing capital for Oracle to do
17 research and development on versions? Or do
18 they -- I mean, is that --

19 A. I think most people -- you know, Oracle
20 and others have said that for many years,
21 explaining why you pay support. That's the
22 reason a bottle exists, that there's no way
23 to build it once and then update it forever
24 if I don't have any money coming in. And so
25 the whole concept around support is that --

1 that there's ongoing requirement, both for
2 bug-fixing patches, new versions, and it's
3 got to be paid for somehow. It's optional.
4 If you don't care about that, you don't have
5 to pay support.

6 PAGE 77:23 TO 77:25 (RUNNING 00:00:07.215)

7 Q. Did Oracle ever receive questions from
8 licensees asking if it was permissible for
9 them to maintain a development environment?

10 PAGE 78:02 TO 78:07 (RUNNING 00:00:11.482)

11 A. That's a common requirement for customers,
12 so I'm sure -- sure they did.

13 Q. When you say "a common requirement," what
14 do you mean?

15 A. A lot of customers have a separate
16 development environment.

17 PAGE 79:03 TO 79:06 (RUNNING 00:00:09.361)

18 Q. Okay. So as long as the company has paid
19 for the right amount of licenses to support
20 its own business use of the software, then it
21 can maintain a development environment?

22 PAGE 79:08 TO 80:12 (RUNNING 00:01:07.032)

23 A. Yes. If, that was in their license
24 agreement, that they negotiated that, then
25 yes.

1 Q. If they negotiated what?

2 A. A development environment. Some people
3 did that.

4 Q. What if they didn't negotiate for a
5 development environment?

6 A. I think it depends on, again, a lot of
7 circumstances, how it was licensed, what's in
8 the contract, because a lot of contracts were
9 different.

10 Q. Do you ever recall Oracle telling a
11 customer that they could not have a
12 development environment?

13 A. No. They -- no, I don't recall that.

14 Q. Is a test environment different than a
15 development environment to you?

16 A. Yes.

17 Q. Okay. How is it different?

18 A. One's -- they're similar, but one's for
19 developing and things are under modification.
20 Another one is for, after you've made your
21 modification, testing it and seeing if it
22 works.

23 Q. So I'm going to ask you the same question
24 for a test environment. Do you ever recall
25 Oracle receiving a question from a licensee

1 regarding whether or not they could have a
2 test environment?

3 A. Yes.

4 PAGE 80:14 TO 80:21 (RUNNING 00:00:18.409)

5 Q. And that was common just as it was for --
6 as with development environment?

7 A. I won't say it's common, but it was
8 certainly something that some customers
9 needed.

10 Q. Do you ever recall Oracle telling a
11 customer that they could not have a test
12 environment?

13 A. No.

14 PAGE 81:03 TO 81:12 (RUNNING 00:00:19.067)

15 Q. In other words, do you ever recall Oracle
16 telling a licensee, yes, you can have a test
17 environment?

18 A. Well, I don't remember us telling them
19 that, but most of them had it -- a lot of
20 them had it. So I'm assuming at some point
21 along the way that conversation took place.

22 Q. And you were the head of global sales;
23 right?

24 A. Right.

25 PAGE 81:13 TO 81:17 (RUNNING 00:00:12.937)

1 Q. Was that part of the sales force's -- was
2 that in your tool kit, so to speak, that if
3 customers had questions on whether or not
4 they could have test or development
5 environments, that the answer was yes?

6 PAGE 81:19 TO 82:22 (RUNNING 00:01:09.140)

7 A. I wouldn't necessarily say it was part of
8 the consulting organization would also be
9 involved -- one of the other -- and I
10 think -- I don't know if we had a standard
11 answer, but certainly they were used to
12 dealing with the question and probably was
13 unique to each customer depending on who's
14 maintaining, how many users, and all those
15 sorts of things.

16 Q. So is it your testimony that there wasn't
17 a set answer, that it depended on the
18 circumstances?

19 A. Not at my level. I didn't focus on it.
20 There may have been -- down in the ranks
21 somewhere, we might have had a policy
22 somewhere, but it was never a big issue,
23 though.

24 Q. Why wasn't it a big issue to Oracle?

25 A. It got solved. If you needed a test or

1 develop environment, somehow it got solved
2 and we accommodated that.

3 Q. You let them have the test or development
4 environment?

5 A. I won't --

6 MS. HANN: Misstates testimony.

7 A. Yeah, I won't say we let them have it; but
8 certainly if it was -- again, all the license
9 agreements are different. There may have
10 been a small fee in some cases, but it was
11 never a major concern.

12 Q. Do you ever recall after -- I'm

13 PAGE 82:23 TO 83:10 (RUNNING 00:00:27.061)
14 assumings these -- these discussions come up
15 after the license agreement's been signed and
16 we have a contract already. Do you recall a
17 specific instance in which a customer paid a
18 small fee or any sort of a fee to get --

19 A. No.

20 Q. -- to be able to run a test environment?

21 A. No, most customers negotiate this stuff up
22 front. If you need that, you already know
23 that. So I'm assuming most customers are
24 smart enough to know, if they need a test or
25 development environment, it's included.

1 PAGE 83:21 TO 84:05 (RUNNING 00:00:23.902)

2 Q. I had asked those questions in the context
3 of PeopleSoft. Is your answer different for
4 JD Edwards?

5 A. No.

6 Q. Is your answer different for Siebel?

7 A. No.

8 Q. What about backup copies of their
9 environment? Did Oracle ever get questions
10 from licensees regarding whether or not they
11 could have a backup copy of their
12 environment?

13 PAGE 84:08 TO 84:10 (RUNNING 00:00:06.652)

14 A. I'm sure we did. We have so many
15 customers. But again, most of the time that
16 was contemplated up front.

17 PAGE 84:11 TO 84:18 (RUNNING 00:00:08.865)

18 Q. Okay. Do you ever recall an instance in
19 which where Oracle told a customer they could
20 not have a backup copy of their environment?

21 A. No.

22 Q. For PeopleSoft, JD Edwards or Siebel?

23 A. No.

24 PAGE 93:16 TO 93:19 (RUNNING 00:00:12.474)

25 Q. For the customers that leave due to price,

1 is that typically those customers who do
2 not need to keep updating their software,
3 they're going to be on kind of a sustaining
4 program?

5 PAGE 93:22 TO 93:25 (RUNNING 00:00:09.901)

6 A. So it -- it may be some of them believe
7 that they don't need support and they don't
8 really want any changes. And maybe they have
9 no choice, they just need to save money.

10 PAGE 96:04 TO 96:21 (RUNNING 00:00:53.890)

11 Q. So what is the -- the lifetime support
12 policy that Oracle instituted in 2006?

13 A. That was to say that even if you weren't
14 upgrading on a continuous basis, you're on a
15 very old version, you could pay a little bit
16 extra for sustaining support.

17 Q. Pay extra over the 22 percent --

18 A. Whatever --

19 Q. -- support fee?

20 A. -- it was that you were paying, it might
21 have been 22, to continue to have us do some
22 limited support on an old version.

23 Q. And that was for an extra fee?

24 A. Correct.

25 Q. Why did that require an extra fee?

1 A. Because it's expensive to support old
2 versions. The more versions you're trying to
3 support, the more support cost you have.

4 PAGE 96:22 TO 96:24 (RUNNING 00:00:05.774)

5 Q. Do you ever recall a customer going off of
6 Oracle support because of quality concerns?

7 PAGE 97:01 TO 97:01 (RUNNING 00:00:01.770)

8 PAGE 97:02 TO 97:04 (RUNNING 00:00:07.000)

9 Q. Was there -- do you recall customers
10 complaining that Oracle's patches and updates
11 needed to be improved?

12 PAGE 97:06 TO 97:25 (RUNNING 00:00:40.926)

13 A. Yes. Sometimes, yes.

14 Q. Okay. Was that ever a reason for -- that
15 you recall as being given for going off of
16 Oracle support?

17 A. No.

18 Q. No. It was just a general fact that they
19 wished Oracle would improve?

20 A. Yes.

21 Q. And what was the concern -- if you recall,
22 what types of concerns did the customers
23 voice with respect to the quality of patches?

24 A. Usually it wasn't the quality. It was
25 usually the complexity, just the multitude of

1 patches and the sequence of patches.

2 Q. So multitude of patches, that means the
3 number of patches?

4 A. Right.

5 Q. Too many or too little?

6 A. Too many.

7 PAGE 153:05 TO 153:09 (RUNNING 00:00:15.055)

8 Assume that a customer -- even if a customer
9 was on Oracle support, if they chose to have
10 their servers off-site, in other words, not
11 in their building, was Oracle aware as to
12 whether customers did that generally?

13 PAGE 153:11 TO 153:19 (RUNNING 00:00:21.411)

14 A. Generally -- I can't say what percentage,
15 but generally, because most customers had
16 another building where the actual computers
17 were, actual headquarters building, that
18 wasn't uncommon.

19 Q. Okay. And so from Oracle's perspective,
20 that was within the customer's right to be
21 able to do that?

22 A. Yes."

23 (End of deposition).

24 THE COURT: All right. Defendants' next
25 witness.

1 MR. RECKERS: Your Honor, we have another video
2 deposition. This one is of Mr. Cort Swanson who is the
3 designee of AGCO Corporation which is a Rimini customer.

4 In connection with this video I would move to
5 admit Plaintiffs' Exhibit 532.

6 COURTROOM ADMINISTRATOR: Plaintiffs'?

7 MR. RECKERS: Yes, ma'am. Plaintiffs'.

8 MR. ISAACSON: No objection, Your Honor.

9 THE COURT: It's admitted.

10 (Plaintiffs' Exhibit 532 received into
11 evidence.)

12 MR. RECKERS: This is approximately 15 minutes.

13 THE COURT: All right.

14 (Videotape deposition of Cort Swanson played
15 as follows:)

16 PAGE 5:13 TO 5:17 (RUNNING 00:00:12.315)

17 "Q. Sir, we just met off the record, but for
18 the record, would you please state your full
19 name.

20 A. Sure. It's Cort Swanson.

21 Q. Would you please spell that.

22 A. C-o-r-t, S-w-a-n-s-o-n.

23 PAGE 10:16 TO 10:23 (RUNNING 00:00:15.763)

24 Q. Okay. Do you understand that AGCO has
25 designated you as the corporate

1 representative in response to the subpoena?

2 A. Yes.

3 Q. Do you understand that that means that you
4 speak for the company on the subject matter
5 of these topics?

6 A. Yes.

7 PAGE 11:12 TO 11:18 (RUNNING 00:00:14.763)

8 Q. Mr. Swanson, who is your current employer?

9 A. AGCO Corporation.

10 Q. And what is your position?

11 A. I'm an IT manager for the North American
12 region.

13 Q. How long have you held that position?

14 A. Approximately two years.

15 PAGE 11:24 TO 11:25 (RUNNING 00:00:04.054)

16 Does AGCO use JD Edwards software?

17 A. Yes, it does.

18 PAGE 15:09 TO 15:17 (RUNNING 00:00:27.626)

19 Q. Okay. Great. Is a company outside of
20 AGCO currently supporting AGCO's JDE
21 software?

22 A. Yes, they are.

23 Q. What is that company?

24 A. Rimini Street.

25 Q. How long has Rimini Street been supporting

1 AGCO's JDE software?

2 A. The contractor with Rimini Street in
3 December of 2010.

4 PAGE 15:18 TO 16:01 (RUNNING 00:00:21.940)

5 Q. And before December 2010, who was
6 supporting it? Was another company
7 supporting JDE's software?

8 A. Oracle was supporting our JD Edwards
9 software.

10 Q. And before Oracle supported AGCO's JD
11 Edwards software, was another company
12 supporting AGCO's JD Edwards software?

13 A. No.

14 PAGE 18:20 TO 18:22 (RUNNING 00:00:02.178)

15 (The Reporter marked the document
16 referred to as Deposition
17 Exhibit 1182 for identification.)

18 PAGE 19:03 TO 19:08 (RUNNING 00:00:15.941)

19 Q. What is this document?

20 A. This is an executive summary that was
21 prepared, I believe by Larry Maya,
22 accompanying the contracts for Rimini Street.

23 Q. Do you believe that because you've seen
24 this document before?

25 PAGE 19:09 TO 19:20 (RUNNING 00:00:39.518)

1 A. I do not recall seeing this document, but
2 this is the format of the executive summary.

3 Q. Does that mean that AGCO regularly
4 prepares executive summary agreements?

5 A. Yes.

6 Q. And what is the purpose of an executive
7 summary?

8 A. The executive summary document often will
9 accompany the contract information so that an
10 executive can quickly read and pertain what
11 this agreement is without having to read
12 through the entire resulting documents.

13 PAGE 20:04 TO 20:13 (RUNNING 00:00:38.675)

14 Q. Why does AGCO prepare executive summaries?

15 A. I believe to give someone an initial
16 understanding of what the documents are that
17 accompany this are about. I don't think that
18 the intent is that they just read the
19 executive summary. I think the intent is to
20 give them an overview before they read the
21 entire document.

22 Q. Are the points raised in the executive
23 summary the points that are most important in
24 the agreement that accompanies the summary?

25 PAGE 20:14 TO 20:22 (RUNNING 00:00:28.905)

1 A. Generally, yes.

2 Q. I'd like you to read the last bullet under
3 "Business Driver/Need"?

4 A. "These agreements will continue to provide
5 software support for JD Edwards and
6 PeopleSoft applications on a global basis at
7 a 50% cost reduction."

8 Q. Was that the most important reason for the
9 attached agreement?

10 PAGE 20:25 TO 21:11 (RUNNING 00:00:37.917)

11 THE WITNESS: I would say yes, it probably
12 was the most important reason. It was not
13 the only reason, but it was the most
14 important.

15 BY MR. RODRIGUEZ:

16 Q. Okay. Are any other reasons provided in
17 the executive summary?

18 A. No.

19 Q. So an executive who picked up the
20 executive summary in the contract would see
21 the price as the most important agreement --
22 as the most important reason?

23 A. I think that's correct.

24 PAGE 27:22 TO 27:25 (RUNNING 00:00:15.828)

25 Q. If I could prove to you and to the Court

1 that Rimini Street had engaged in large scale
2 and systematic illegal downloading of Oracle
3 materials, would AGCO have contracted with
4 Rimini Street?

5 PAGE 28:04 TO 28:06 (RUNNING 00:00:13.274)

6 THE WITNESS: If Rimini Street was convicted
7 of illegal activity, I do not think AGCO --
8 AGCO would not do business with them.

9 PAGE 28:08 TO 28:11 (RUNNING 00:00:17.641)

10 Q. When you say, "convicted," do you mean if
11 it had been proven in a court of law that
12 Rimini Street engaged in illegal activities?

13 A. Yes.

14 PAGE 32:04 TO 32:05 (RUNNING 00:00:06.542)

15 Q. Is it important to you that Rimini Street
16 be able to at least match Oracle's support
17 level?

18 PAGE 32:06 TO 32:08 (RUNNING 00:00:07.312)

19 A. Our understanding and experience has been
20 that Rimini Street has surpassed Oracle's
21 support level.

22 PAGE 32:25 TO 33:06 (RUNNING 00:00:28.318)

23 Q. Okay. Were there any other companies
24 besides Rimini Street and Oracle that AGCO
25 considered contracting with for JD Edwards

1 support?

2 A. Not that I'm aware of.

3 Q. Are you aware of any companies besides
4 Rimini Street and Oracle that would be
5 capable of satisfying AGCO's need for JD
6 Edwards support?

7 PAGE 33:07 TO 33:08 (RUNNING 00:00:08.999)

8 A. I am not aware of any other companies that
9 provide that type of support for JD Edwards.

10 PAGE 33:09 TO 33:21 (RUNNING 00:01:02.471)

11 Q. If Rimini Street had not existed, would
12 AGCO still be on Oracle's support for JD
13 Edwards?

14 A. One of the things we were also considering
15 is completely dropping Oracle support for JD
16 Edwards.

17 Q. And what would AGCO have done in that
18 circumstance?

19 A. Supported the applications ourself.

20 Q. Okay. Do you have a sense as to the
21 manpower that would be required for that?

22 A. We get very little support from Oracle
23 over the last several years. We are not
24 upgrading our product that we had from them,
25 and we have had very few calls to their

1 support line that I'm aware of.

2 PAGE 37:11 TO 37:14 (RUNNING 00:00:19.878)

3 Q. When you said AGCO was considering self
4 support, did AGCO consider the efforts
5 required to monitor new legislation?

6 A. Yes.

7 PAGE 37:15 TO 38:02 (RUNNING 00:00:47.997)

8 Q. Did AGCO have an estimate of what that
9 would cost AGCO?

10 A. In North America, we looked at how we
11 would support our regulatory changes, yes.

12 Q. And did looking at how AGCO would support
13 regulatory changes involve estimating the
14 cost to AGCO of supporting those regulatory
15 changes?

16 A. Yes.

17 Q. What was that cost?

18 A. For North America, the cost would be
19 acquiring a third-party product to produce
20 1099 documents, which is relatively
21 inexpensive as compared to the amount we were
22 being charged by Oracle.

23 PAGE 38:03 TO 38:12 (RUNNING 00:00:41.640)

24 Q. And what about South America?

25 A. I have no knowledge of what their cost

1 estimates were.

2 Q. Does AGCO have JD Edwards installations in
3 Europe?

4 A. AGCO does have an older JD Edwards
5 implementation in Europe.

6 Q. Did AGCO consider the efforts involved in
7 monitoring European legislation?

8 A. I have no knowledge of the European
9 efforts.

10 PAGE 46:01 TO 46:02 (RUNNING 00:00:06.156)

11 Q. As of 2007, was it AGCO's position that it
12 wanted to be on SAP by 2010?

13 PAGE 46:03 TO 46:07 (RUNNING 00:00:25.922)

14 A. My memory is that we had firm plans for
15 initial implementations. After the initial
16 implementations, the plans were less
17 concrete. But, yes, there was a desire to
18 move toward -- to SAP from the top of the
19 corporation.

20 PAGE 46:08 TO 46:17 (RUNNING 00:00:47.871)

21 Q. "From the top of the corporation." Does
22 that mean that the plans are not coming from
23 technology people?

24 A. These can be business plans. These were
25 largely driven by business plans that are

1 seeking to have a unified software
2 architecture.

3 Q. Have those plans run into difficulties?

4 A. Implementations are always difficult, so
5 there have been difficulties. Or they have
6 been amended over time.

7 PAGE 57:04 TO 57:10 (RUNNING 00:00:42.651)

8 Q. In AGCO's experience, does Oracle
9 negotiate on price?

10 A. Yes, except for maintenance.

11 Q. What do you mean, "except for
12 maintenance"?

13 A. We have tried in the past to reduce our
14 maintenance for our JD Edwards applications,
15 and I don't think we've had very good success
16 in that.

17 PAGE 59:19 TO 59:24 (RUNNING 00:00:23.081)

18 Q. Does AGCO today see a long-term future
19 with Oracle, with respect to any software,
20 not just JD Edwards?

21 A. With respect to any software?

22 Q. Any Oracle software.

23 A. I would say yes.

24 PAGE 63:13 TO 64:08 (RUNNING 00:01:16.013)

25 Q. All right. Earlier opposing counsel asked

1 some questions about considerations that AGCO
2 made in determining to move from Oracle
3 support to Rimini Street support, one of
4 which was cost; is that correct?

5 A. Correct.

6 Q. What other considerations did AGCO weigh
7 when making a decision to switch to Rimini
8 Street?

9 A. One of the other big considerations is --
10 for us was cost avoidance of having to
11 upgrade our JD Edwards environments to still
12 maintain support from an outside party.

13 Q. And why -- if AGCO had stayed with Oracle,
14 why would AGCO have been forced to switch to
15 a newer software platform?

16 A. Oracle only provides support for -- it is
17 my understanding that Oracle only provides
18 support for older releases of software for a
19 certain period of time, and in order to still
20 be in a position to get support on those
21 applications, we feel forced to upgrade to
22 the next release.

23 PAGE 65:07 TO 65:19 (RUNNING 00:00:54.704)

24 Q. Sure. Sure. We were discussing cost and
25 quality of service and fit for situation as

1 reasons why AGCO chose Rimini Street.

2 A. Okay. The fit for the situation was --
3 really describes the fact that we are at the
4 end of our -- the perceived end of our life
5 of these JD Edwards applications and really
6 are trying to extend that life while we are
7 rolling out the new SAP solution. We would
8 ideally not like to go through the time and
9 effort to implement a new release to be able
10 to extend the life of our existing release of
11 the software, continuing to provide the same
12 functions that they are delivering in our
13 business.

14 PAGE 65:20 TO 66:22 (RUNNING 00:01:49.151)

15 Q. And has the Rimini Street support allowed
16 AGCO to extend the life of its JD Edwards
17 software?

18 A. Yes.

19 Q. And one of the other considerations you
20 mentioned was quality of service. When you
21 compare the quality of support service
22 received from Oracle versus that of Rimini
23 Street, which is superior?

24 A. We have found that the -- for the issue
25 support that we receive, Rimini Street is

1 much superior. We have a named software
2 engineer who contacts us within 30 minutes of
3 any problems. We are able to self select the
4 seriousness of the issue, and if we have a
5 very high priority one, we can designate it
6 high priority. And just three weeks ago we
7 had a situation where we had that issue, and
8 we had a Rimini Street person on the phone
9 with us at 9:00 o'clock at night within 30
10 minutes of calling the issue in, and he
11 stayed on the phone with us through almost
12 1:00 o'clock in the morning. So that was
13 pretty good support. Excellent support.

14 Q. And did you have a similar experience with
15 Oracle support?

16 A. Oracle support is -- was not nearly as
17 customer focused. Oracle support only
18 supports their application, and if the
19 application is modified, they do not support
20 it. So Rimini Street is willing to work with
21 us kind of where we are in the situation
22 that we're in."

23 (End of Deposition.)

24 THE COURT: All right. It's 5:00, ladies and
25 gentlemen. I'm sure you're ready to go home. We are all

1 are.

2 I will give you the cautionary instruction just
3 because it's been a while.

4 I remind you not to converse about the case with
5 anyone, or allow anyone to discuss it in your presence.

6 I remind you not to read, watch, or listen to
7 any report or commentary relative to this case in any way
8 in any medium, and that would include the Internet,
9 newspaper, radio, television, et cetera.

10 I caution you not to do any independent research
11 on your own of any kind with the interest that this jury
12 decide this case based on having heard all the same
13 evidence.

14 Please keep an open mind until all the witnesses
15 and evidence has been presented and you've heard the
16 Court's instructions on the law, you've heard the
17 attorneys' closing arguments, and the jury is finally able
18 to deliberate this case.

19 And if you've taken your notes, please leave
20 them in the jury room.

21 We'll start promptly in the morning at 8:00 a.m.

22 And I would tell you, I think we continue to be
23 moving along fairly well. So I wish you a pleasant
24 evening. Thank you very much, and you may step down.

25 COURTROOM ADMINISTRATOR: Please rise.

1 (Jurors exit courtroom at 5:06 p.m.)

2 MR. ISAACSON: Your Honor, nothing major.

3 During the last few minutes we've gotten a Rule
4 50 brief that's about 42 pages so then rather than tomorrow
5 night, we'd like until 8:00 a.m. the following day.

6 THE COURT: Not a problem.

7 But that brings to mind another thought that I
8 had earlier today. I anticipate that the briefing on the
9 Rule 50 is extensive, as you've just indicated, and I
10 haven't seen -- I haven't seen what has been filed on
11 behalf of defendants.

12 But it's entirely possible -- usually I -- if
13 the question is complex, if I feel that I need to review
14 evidence and -- it's just not a straightforward question, I
15 will frequently take those motions under consideration and
16 reserve ruling on them, and we'll go ahead and instruct and
17 go to the jury on the issues.

18 That brings to mind that I haven't received any
19 proposed verdict forms, and I'm sure that's not a pleasant
20 subject for anyone to deal with in a case like this, but it
21 needs to be dealt with.

22 So I'd like to have some proposed verdict forms.
23 I'm not really giving you a time limit on this, but it's in
24 our interest to get that underway.

25 MR. ISAACSON: The parties have exchanged

1 proposed verdict forms. I think we're only 999 pages apart
2 in length, but I think we're both in a position to submit
3 competing verdict forms.

4 THE COURT: If you are, I would encourage you to
5 do that; the earlier the better.

6 MR. WEBB: One more thing, Judge, and I haven't
7 had a chance to talk to Bill about this, but the way the
8 schedule has sort of fallen out, it looks like we may be
9 sort of done with the presentation of evidence Thursday, if
10 not Wednesday.

11 Rather than bringing the Court back on Friday,
12 one possibility would be for us to come up to Reno so your
13 staff doesn't have to come back down here after your
14 meeting on Thursday.

15 We're just trying to do the charge conference up
16 there in your court. I just put that as a possibility.
17 I'm sure that Oracle wouldn't object, but it may save you
18 another trip back and forth.

19 THE COURT: Say again.

20 MR. WEBB: If we're doing the charge conference,
21 and you expect that it might be the better part of a full
22 day, if we wrap up early enough, it may prevent you all
23 from coming back down here because to finish up the rest of
24 the week because I know Your Honor has to go up to Reno --

25 THE COURT: Well, that's unique to me, not to

1 the rest of my staff. And if it happens, if we're at such
2 a critical stage that that is clearly going to interfere,
3 it's possible that I'll cancel that commitment, but it's
4 very difficult for me to do that.

5 So your best guess right now on where we are on
6 finishing the case is?

7 MR. WEBB: Well, I sort -- we're a little
8 behind. I didn't think today's witness presentation would
9 go on as long as it did, but I still think it's reasonable
10 to think that we could be done with our case by Wednesday.

11 Again, we have other witnesses, some evidentiary
12 issues that are outstanding, but I think that's still a
13 decent projection for our case.

14 It's might bleed over to Thursday. Given what
15 happened today that's not unreasonable to expect, but
16 that's sort of how we -- and I don't know if they plan to
17 call rebuttal and, if so, what it will be. But for our
18 case we think we'll be resting late Wednesday if not early
19 Thursday.

20 THE COURT: Okay.

21 MR. ISAACSON: That sounds about right. I'm
22 suspecting there's going to be some bleed-over into
23 Thursday, but not a full day, and if we do something very
24 short in rebuttal, that will be part of that bleed-over.

25 THE COURT: All right. Well, let me keep all of

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1 that in mind. It could be -- well, let me keep it in mind.
2 We'll be discussing it further as we move along. I
3 appreciate your keeping me informed.

4 All right. Thank you. I'll wish you a pleasant
5 evening.

6 COURTROOM ADMINISTRATOR: Please rise.

7 (THE proceedings adjourned at 5:10 p.m.)

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I certify that the foregoing is a correct
transcript from the record of proceedings
in the above-entitled matter.

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Donna Davidson, RDR, CRR, CCR #318 Official Reporter	9/28/15 Date

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